

Citation: ☀ Grantham v. The Owners, Strata Plan
2013 BCPC 0146

Date: ☀20130603
File No: C64431
Registry: Nanaimo

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

FAYE GRANTHAM

CLAIMANT

AND:

THE OWNERS, STRATA PLAN VIS 4116

DEFENDANT

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE J.P. MacCARTHY**

Appearing on their own behalf:

Faye Grantham

Appearing for the Defendant:

Gerald A. Garnett

Place of Hearing:

Nanaimo, B.C.

Dates of Hearing:

February 26, 2013 and March 7, 2013

Date of Judgment:

June 3, 2013

Introduction

[1] The Claimant is the former owner of a strata lot comprised of a detached house and seeks to recover from The Owners, Strata Plan VIS 4116 (the “Defendant Strata Corporation”) the amount of \$5,096 plus court fees and other expenses for the cleanup and treatment of mould growing on the underside of the floor sheathing in the crawlspace area of the house.

[2] The Claimant alleges that as part of its duty to repair and maintain, as set out in the strata bylaws, the Defendant Strata Corporation has the responsibility to deal with the cleanup and treatment of the mould. The Claimant says that the Defendant Strata Corporation failed in their duty, thereby necessitating the Claimant to incur these claimed expenses. Accordingly, the Claimant seeks reimbursement from the Strata Corporation.

[3] At the hearing of this matter the position asserted by the Defendant Strata Corporation, in part, was that their duty to repair and maintain the strata unit does not impose a requirement to remediate the mould problem that was present or to remediate it in the manner completed by the Claimant’s contractor.

[4] According to my review of the court file, an unsuccessful mediation session through the Court Mediation Programs was held on February 28, 2012. A pre-trial conference before a judge was held in connection with this action on May 28, 2012. The parties did not have the opportunity to have a settlement conference before a judge pursuant to Rule 7 of the *Small Claims Rules*.

[5] So far as I can determine, the issue of the jurisdiction of the *Provincial Court of British Columbia* to deal with the issues raised this claim were not canvassed on those occasions. Neither party raised this issue in their pleadings nor brought on a pre-trial application in order to deal with the jurisdictional issue.

[6] At the outset of the trial of this matter on February 20, 2013, I raised the possible issue of a lack of court jurisdiction with the parties. The parties were both self represented. It was clear that neither of the parties were in a position to address this jurisdictional issue and I did not have satisfactory materials before me to deal specifically with it. Accordingly, I proceeded to hear evidence that related both to the jurisdictional issue as well as the substantive issue, such that I would have a proper basis for a determination of both issues.

Background

[7] The Defendant Strata Corporation is commonly known as the Arbutus Grove Strata Corporation. There are approximately 87 strata lots in the Arbutus Grove Strata Development, which itself forms part of the Craig Bay Community, being a strata development near Parksville, British Columbia. Apparently there are at least three other strata corporations which form part of the Craig Bay Community. I gather that the same developer was responsible for each of the separate strata developments within the Craig Bay Community. The overall development consists of detached houses, duplexes and apartment type condominium units. The various strata corporations share similar forms of bylaws.

[8] Within the Arbutus Grove Strata Development the strata lots consist of a combination of detached houses and duplexes. Strata plan VIS 4116 is a conventional strata plan, with a number of phases. It is not a bare land strata plan. However, the Arbutus Grove Strata Development has a noteworthy feature. Several of the strata lots consist solely of a detached dwelling. Surrounding the detached dwelling is common property. Therefore what appears to be a dwelling's private yard area is in fact common property within the strata plan and the dwelling's adjacent patio is actually limited common property.

[9] A number of the detached dwellings are built on concrete slabs. Some of the detached dwellings have a crawlspace which forms part of the strata lot. In the Reply filed by the Defendant Strata Corporation, it was alleged that the crawlspace "could be perceived as part of the strata lot and not common property and therefore the unit owners and not the Strata Corporation should be looking after this type of maintenance or repair." Based upon the evidence, this defence was ill founded.

[10] At the hearing of this matter, the Defendant Strata Corporation conceded that the crawlspace is part of the strata lot and the subfloor above the crawlspace is part of the structure of the building. In addition it is conceded that it is the duty of the Defendant Strata Corporation to repair and maintain the sheeting that forms part of the subfloor.

[11] Section 72 of the *Strata Property Act* sets out the maintenance and repair obligations of a strata corporation. It reads as follows

Repair of property

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.

[12] Under the Defendant Strata Corporation's bylaw Section 2 and bylaw Section 8 (as permitted by section 72 (3) of the *Strata Property Act*), state as follows:

Division 1 – Duties of Owners, Tenants Occupants and Visitors

Repair and Maintenance of Property by owner

2. General

1) An owner must repair and maintain the owner's strata lot except for repair and maintenance that is the responsibility of the Strata Corporation under these bylaws.

2) An owner who has the use of limited common property must repair and maintain it except for repair and maintenance that is the responsibility of the Strata Corporation under these bylaws.

Division 2 – Powers and Duties of Strata Corporation

Repair and Maintenance of Property by Strata Corporation

8.

1) the strata corporation must repair and maintain all of the following:

a) common assets of the strata corporation;

- b) common property that has not been designated as limited common property;
 - c) limited common property, but the duty to repair and maintain is restricted to:
 - i) repair and maintenance that in the ordinary course of events occurs less often than once a year, and
 - ii) the following, no matter how often the repair or maintenance ordinarily occurs:
 - (A) the structure of a building;
 - (B) the exterior of the building;
 - (C) chimneys, stairs, balconies and other things attached to the exterior of the building;
 - (D) doors, windows and skylights on the exterior of a building or that front on a common property; and
 - (E) fences, railings and similar structures that enclose patios, balconies and yards.
 - d) a strata lot in the strata plan that is not a bare land strata plan, but the duty to repair and maintain it is restricted to
 - i) the structure of the building;
 - ii) the exterior of the building;
 - iii) chimneys, stairs, how can these and other things attached to the exterior of a building;
 - iv) doors, windows and skylights on the exterior of a building or that front on the common property; and
 - v) fences, railings and similar structures that enclose patios, balconies and yards.
- 2) the powers and duties of the strata corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the council of the strata corporation, except that all of the duties and responsibilities of the strata corporation with respect to the

community lands shall be exercised and performed by the CLC as otherwise described in these bylaws

3) the strata corporation must ensure against major perils, as set out in Strata Property Regulation 9.1(2), including, without limitation, earthquakes.

[13] Bylaw 3(5) refers to the CLC as the Committee Lands Committee. Bylaws 3 (24) and (25) further describe the function of the CLC which includes being exclusively responsible for all matters relating to the management, operation, control, maintenance and administration of the community lands. The CLC is apparently a creature of a registered building scheme created in 1996 and which applies to a number of the lands and strata corporations within the Craig Bay Community.

[14] Under a related bylaws section headed "Obtain approval before altering strata lot", section 5 of the bylaws reads as follows:

5.
 - 1) an owner must obtain the written approval of the Strata Corporation before making an alteration to a strata lot that involves any of the following:
 - a) the structure of a building;
 - b) the exterior of the building;
 - c) chimneys, stairs, balconies or other things attached to the exterior of the building;
 - d) doors or windows on the exterior of a building, or that front on the common property;
 - e) fences, railings or similar structures that enclose a patio, balcony or yard;
 - f) common property located within the boundaries of a strata lot;

- g) those parts of the strata lot which the Strata Corporation must insure under section 149 of the *Strata Property Act*; and
 - h) wiring, plumbing, piping, heating, air conditioning, and other services.
- 2) the strata corporation must not unreasonably withhold its approval under section 5(1) , but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.
 - 3) prior to commencement of any interior changes which would normally require a provincial or municipal permit, the owners shall provide the strata council with satisfactory evidence that the alteration complies with all building codes, receipt of all necessary building permits and, in the case of a structural alteration, the written opinion of a qualified architect or engineer or similar professional which indicates that the structural integrity of the buildings will be maintained.

[15] The Claimant entered into an agreement in the summer of 2005 to purchase Strata Lot 72, Strata Plan VIS 4116 being located at 1230 Saturna Drive, Parksville, British Columbia (“Strata Lot 72”) which is a single-storey detached bungalow with an area of approximately 1600 ft.². It has a crawlspace below the main living area which crawlspace is less than 5 feet high. This dwelling was constructed approximately 14 years ago, as at the date of the hearing of this matter. Strata Lot 72 is in Phase X11 of Strata Plan VIS 4116.

[16] The Claimant engaged the services of an inspection service prior to completing the purchase of Strata Lot 72. In a report dated June 16, 2005, completed by HouseMaster (the “HouseMaster Report”) the following observation is contained under the section entitled Floor Framing:

Silent floor system present. Limited evaluation at perimeter due to insulation present. Some black staining/mildew like substance noted on underside of floor sheathing through-out, cause not determine. Clean as needed. Have further

evaluated as desired. You may wish to ask the owner about prior history. Two small damaged areas of sheathing also noted, support/repair as needed.

[17] The Claimant was not concerned about the staining/mildew matter and proceed with the purchase of Strata Lot 72 in October of 2005. The HouseMaster Report was provided to the Claimant's realtor, to arrange for delivery of it by the seller to the Strata Corporation's then property manager, Ardent Properties. The intent was such that the underside of the floor sheathing could be cleaned or repaired as needed. This delivery was done all in accordance with a written undertaking signed by the seller. The Defendant Strata Corporation apparently received the HouseMaster Report and notification of the staining/mildew condition in or around June of 2005. No steps were taken by the Strata Corporation or by its strata council to deal with this matter. The Claimant took no further steps to follow up on this matter.

[18] It is undisputed that the strata council of the Defendant Strata Corporation (the "Strata Council") also received notification of similar types of complaints about another of its strata lot in 2005 and about a further separate strata lot in 2009. These complaints were apparently both characterized as a mould in the crawl space problem. In November of 2005 the Strata Council discussed a request for mould remediation of the strata lot at 1230 Gabriola Drive. In May of 2009 the strata council considered the mould complainant for 1226 Gabriola Drive.

[19] No steps were taken by the Strata Corporation to deal with the remediation of these mould problems in either strata lot. On May 27, 2009, the Strata Corporation's then current strata property manger, Concise Strata Management Services Inc.

("Concise") informed the Strata owner of 1226 Garbriola that the mould remediation would be at the expense of that owner and not the Strata Corporation.

[20] Apparently no action was taken by either of these Strata owners to challenge that decision or the lack of a decision of the Strata Council.

[21] Gerald Garnett appeared as president of and represented the Defendant Strata Corporation at trial. He has been involved with the Strata Council for a number of years. He testified on behalf of the Defendant and candidly admitted that the Strata Council has a concern that it may have significant financial exposure to remediate a number of the strata lots which are built with crawlspaces. He estimates that there may be 15 such strata lots out of the total number of 87 strata lots.

[22] The Claimant entered into a contract of purchase and sale dated December 10, 2012 for the sale of Strata Lot 72. The scheduled completion date was originally set for March 15, 2010 but was advanced to February 28, 2011. The offer was made subject to a satisfactory home inspection.

[23] The prospective purchaser retained the services of a home inspection service known as All in One Home Inspections ("All In One"). It produced a report dated December 20, 2010 (the "All in One Report") which confirmed the detection of a mould condition in the crawl space. Under the heading "Roof Framing\Sheathing" it stated as follows:

Condition - Mold

This is common when crawlspace ventilation is lacking, however it is also common when framing has taken place in the winter or during wet/ inclement

weather and left damp for an extended period. We are providing the name and phone number of a company which specializes in remediation of this condition and offers a transferable warranty for the work performed. All in One Home Inspections has no financial interest in this company. They are the only firm that we know of that performs this particular method of remediation, and provides this warranty that we know of.

This condition is always a concern where furnaces and their duct work are present in a crawlspace. Medallion Healthy Homes (specific mould/fungal remediation services for attics and crawlspaces).....

[24] The All in One Report continues by providing a list of other possible remediation resources. It then goes on to say as follows:

We recommend air samples be a obtained prior to and post remediation.
Remediation companies should not be providing this service (conflict of interest)

and thereafter it provides the name of some referral firms and then continues as follows:

We also recommend a complete professional cleaning of the building post remediation and cleaning/sanitizing of the furnace and ductwork as a final step before clearance sampling. Use of the furnace prior to cleaning the interior post remediation is discouraged. You may want to consult with a crawlspace ventilation specialist for further advice on maintaining a healthy environment once remediation has been completed.

[25] The prospective purchasers of Strata Lot 72 were concerned about the crawlspace mould condition. They required that it be remediated prior to the completion of the purchase.

[26] The Claimant contacted Concise on December 21, 2010 informing them of the mould problem and demanded that the mould problem be dealt with by the Strata Corporation. The Claimant had obtained a quote from Medallion Healthy Homes which provided for a comprehensive remediation apparently as recommended by All in One and provided a 30 year transferable warranty. The quote was in the amount of \$5,096 inclusive of HST.

[27] Maintenance representatives of Concise conducted an inspection of the crawl space on December 22, 2010. On December 23, 2010, Concise informed the Claimant by way of an e-mail that a past inspection conducted on the strata lot at 1226 Gabriola Drive had concluded that the mould was dormant, with no growth spores and was not dangerous. Concise further informed the Claimant that the Strata Council had placed the responsibility of all costs for remediation on the owner of that strata lot and further informed the Claimant that "it would be the same in this situation."

[28] Communication continued between the Claimant and Concise. On January 7, 2011, the Claimant sent a detailed letter outlining the mould in the crawl space problem, providing with it a copy of certain portions of All-In-One Report, which related to the mould problem, pointing to the duty of the Strata Corporation to repair the structure of the building and providing the estimate from Medallion Healthy Homes. The Claimant set a deadline of 30 days for the Strata Corporation to undertake the work "with due diligence".

[29] Further communication by way of telephone and e-mail continued between the Claimant (and her husband) with Concise. The Strata Council resolved to obtain an assessment and the recommendations from their own mould expert, at their meeting held on January 14, 2011.

[30] On February 1, 2011 Concise informed the Claimant that the Strata Council was requesting that an assessment be done to determine whether or not the mould was a health hazard. The name of Gordon Wedman was provided and arrangements were made for the inspection to occur

[31] Pacific Environmental Consulting ("PEC") was engaged by Concise on behalf of the Strata Corporation. Gordon Wedman, PEC's Nanaimo Branch Manager, conducted and completed an inspection of Strata Lot 72 on February 2, 2011. Mr. Wedman holds a Masters of Engineering degree (but he is not a professional engineer) together with professional qualifications as an industrial hygienist (CIH, ROH) and a Certified Mould Inspector (CMI). PEC prepared a report for Concise dated February 10, 2011 (the "PEC Feb/11 Report") based on the inspection and the analysis undertaken.

[32] The purpose of Mr. Wedman's inspection was to conduct a "fungal inspection and fungal air sampling" in order to determine "whether or not fungal contamination was present in the crawlspace and whether or not it was impacting the occupied areas of the house".

[33] Besides a visual inspection of the crawlspace, Mr. Wedman collected three spore trap samples from the unit's living room, crawlspace and the outdoors for comparison. He also completed a tape lift sampling of the suspected fungal contamination which covered a majority of the subfloor sheeting in the ceiling of the crawl space. The resulting labelled microscopic slide was then sent away for analysis.

[34] The PEC Feb/11 Report outlined the details of the inspection and findings of PEC. The microscopic examination by the analyst revealed the presence of Cladosporium which apparently is a tree leaf fungi that exists everywhere outdoors. The analyst concluded that the "growth looked old and there was little sporulation which suggests the fungi is essentially dormant".

[35] A high concentration of Cladosporium was confirmed by the air sample taken from the living room. It was higher than the outdoor concentration and the crawlspace concentration. Given the fact that the humidity levels in the crawlspace were within normal limits, the PEC Feb/11 Report speculated the fungal growth in the crawlspace occurred during the original construction of the house.

[36] The PEC Feb/11 Report observes as follows:

Cladosporium is not commonly associated with the production of adverse health effects in persons of normal health status. The airborne concentrations detected in the house on the day of the survey would not generally be considered to be reason for concern. There is potential, however, for airborne concentrations of spores to increase if the crawlspace becomes wet as this would provide favorable conditions for fungal growth and sporulation. As the crawlspace appears to share the forced air heating system with the occupied areas of the house any spores produced in the crawlspace would be spread throughout the house.

High concentrations of fungal spores are likely to be irritating to most persons and fungal growth is likely to produce objectionable odours. Prolonged exposure to high levels of fungal spores and fragments of fungi (mycelia) has the potential to cause allergic reactions in persons prone to allergies. Persons with impaired health might develop systemic infections from exposure to high concentrations of fungal spores.

[37] The recommended solution from PEC was to spray the underside of the subfloor in the crawlspace (being the floor sheeting) with a U.S. Environmental Protection Agency registered antifungal sealant. This would "bind the existing fungi and spores to the wood surface" and would "prevent renewed growth of the fungi if the basement should become wet". Two particular products were recommended as was the engagement of a contractor "experienced in fungal remediation techniques".

[38] In the meantime, around January 26, 2011 Concise also sought a quote from ProPacific Restorations Ltd. ("ProPacific") in order to compare it to the Medallion Healthy Homes' quote obtained by the Claimant. Around January 21 or 22 of 2011 a ProPacific representative completed an inspection of Strata Lot 72. The Claimant was notified and was apparently present at the time of this inspection.

[39] The PEC Feb/11 Report was apparently delivered to the Claimant around February 10, 2011 by Concise. Concise never committed the Strata Corporation to any particular course of action. In the meantime the Claimant also kept pressing for an answer from the Strata Corporation through Concise and informed them of the Claimant's intention to proceed with the remediation and to claim all expenses thereby incurred from the Strata Corporation.

[40] The Claimants made arrangements with Medallion Healthy Homes in order to complete the mould remediation work prior to the revised closing date of February 28, 2011. The Claimant moved out of Strata Lot 72 around February 15, 2011 to permit the mould remediation to proceed.

[41] The Claimant informed Concise that since no confirmation had been received as to the Strata Corporation's position as at February 15, 2011 and given the fact that the next Strata Council meeting was scheduled for around March 3 or 4 2011, following their sale completion date, the Claimant would be proceeding to have Medallion Healthy Homes complete the mould remediation and the Claimant would be rendering their invoices to the Strata Corporation for reimbursement. Medallion Healthy Homes

completed the remediation work in accordance with their quote in or around February 22, 2011 and rendered their invoice to the Claimant

[42] The Claimant testified that the Medallion Healthy Homes' invoice was faxed to Concise in or around February 22, 2011. It apparently did not come to the attention of the Strata Council until sometime much later.

[43] The Strata Council met on March 3, 2011 in order to review the PEC Feb/11 Report recommendations. Thereafter they sought a further quote from ProPacific in order to complete the recommended work. In their quote dated March 10, 2011, ProPacific quoted an amount of \$1612.80, inclusively of HST in order to complete the work recommended by PEC.

[44] The March 10, 2011 quote contains, in part, the following comments:

ProPacific Restorations Ltd. recommends all areas with mould growth should be visually monitored within 3 months and every 6 months thereafter to prevent any chance of reoccurrence

ProPacific Restorations Ltd. has no responsibility on the air quality of the airspace (ceiling of crawlspace only)

[45] At its April 8, 2011 meeting, the Strata Council approved reimbursement to the Claimant of an amount equal to the ProPacific estimate. Concise wrote to the Claimant on April 15, 2011 outlining the Strata Council's position regarding reimbursement and requesting confirmation from the Claimant that she would accept this amount as full and final settlement. By way of an e-mail dated April 21, 2011 the Claimant rejected that settlement proposal, the offer was withdrawn and this litigation resulted.

[46] At the trial, the Claimant elected not to call Mike McKinnon the principal of Medallion Healthy Homes or a representative of All in One to explain their approach to the mould remediation.

[47] Gordon Wedman was called by the Defendant Strata Corporation and testified. Mr. Wedman was qualified as an expert witness. His expertise is in assessing health hazards, including from moulds, and also in assessing damage from things like mould, but he does not have expertise in doing the actual remediation work.

[48] He was the author of a further PEC report completed January 10, 2013 (the "PEC Jan/13 Report"). Both in that report as well as in his testimony, Mr. Wedman compared the two different options for mould remediation presented in the Medallion Healthy Homes' quote and as recommended in the PEC Feb/11 Report.

[49] The significant difference between the two approaches is that it appears Medallion Healthy Homes (and by inference that of All in One) determined that it was necessary to physically remove the fungal contamination by way of scraping and thereafter spray a specialized cleaning solution throughout the entire crawlspace. Following that was the application of an antifungal spray agent throughout the entire crawlspace.

[50] Mr. Wedman was of the view that given the level of fungal contamination observed by him that the Medallion Healthy Homes' approach was not necessary. The scraping of the course surface of the wood would likely not remove all of the embedded fungal fragments. Furthermore physical removal may result in the release of large quantities of fungal spores and fragments in the air thereby resulting in contamination of

the house, if proper procedures were not employed. In his view the application of his recommended anti fungal sealer would "lockdown any fungal spores or fungal filaments that were present on the surface" and "reduce the likelihood that fungal growth will occur in the future."

[51] In Mr. Wedman's view, given the circumstances outlined above and the higher cost associated with it, the Medallion Healthy Homes' approach "did not appear to be justifiable." He viewed his solution as being more cost-effective and less intrusive.

[52] He did admit that his recommended approach was not designed to deal with "catastrophic release of water in the crawlspace as might occur from a pipe break". He concedes that regardless of what approach was used, quick remediation would be required in order to prevent fungal growth if such water infiltration were to occur.

[53] When asked to describe the relative nature of the two different approaches he characterized that "to do nothing to deal with the mould" was the low end, his approach as "middle-of-the-road" and the Medallion Healthy Homes' approach as at the "high end."

Positions of the Parties

Claimant's Position

[54] The Claimant's position is straightforward. She says that the strata bylaws require the Strata Corporation to repair and maintain the structure of their strata lot. The mould problem was found on the structure of Strata Lot 72. The Claimant learned of the extent of and the concerns about the mould problem from the All in One Report. In

accordance with the recommendations contained in that report the Claimant sought advice from Medallion Healthy Homes as to an appropriate remediation process.

[55] They notified the Strata Corporation of their duty to deal with the mould remediation. The Strata Corporation failed to comply with their repair and maintenance obligation in a timely fashion, thereby leaving the Claimant in the necessary position to undertake and pay for that work. Accordingly, the Claimant should be compensated for this incurred maintenance and repair expense.

Defendant's Position

[56] The Defendant's position is that it has a responsibility to repair and maintain the structure of Strata Lot 72 but that it retains the discretion and authority to decide what action, if any, is required in order to fulfill that duty.

[57] Specifically the Defendant Strata Corporation says that the mould in the crawl space of Strata Lot 72 is not a health issue, that the Strata Corporation has not remediated this type of mould in other units in the past and the Defendant Strata Corporation, through its Strata Council and not the individual owners has the authority to decide what repairs and maintenance work is required.

[58] The Defendant further says that the remediation undertaken by the Claimant was unnecessary, based on the fact that there was no health risks emanating from the mould. The actions of the Claimant in pursuing the remediation work was contrary to bylaw 5 insofar as the Claimant did not have the written approval of the Strata

Corporation to undertake work on the structure of the building. Accordingly the Claimant's claim should be dismissed.

Jurisdictional Issue

[59] It is essential that the jurisdiction of the Provincial Court be established in this matter, in order for it to determine whether the amount claimed by the Claimant is recoverable in these proceeding. If that jurisdiction cannot be established, then the remedy of the Claimant lies within the jurisdiction of the *Supreme Court of British Columbia*.

[60] In civil matters of this nature, the general jurisdiction of the *Provincial Court of British Columbia* is set out in section 3 of the *Small Claims Act*, R.S.B.C. 1996, c. 430. It provides as follows:

Claims the court may hear

3 (1) The Provincial Court has jurisdiction in a claim for

- (a) debt or damages,
- (b) recovery of personal property,
- (c) specific performance of an agreement relating to personal property or services, or
- (d) relief from opposing claims to personal property

if the amount claimed or the value of the personal property or services is equal to or less than an amount that is prescribed by regulation, excluding interest and costs.

(2) The Provincial Court does not have jurisdiction in a claim for libel, slander or malicious prosecution

[61] This claim is within the monetary jurisdiction of \$25,000 or less excluding interest and costs as contemplated by the *Small Claims Act*, s. 3(1).

[62] In order to consider the jurisdictional issue it is necessary to consider Part 10 of the *Strata Property Act* S.B.C. 1998, c. 43. It deals with litigation between strata unit owners and the strata corporation. The relevant sections are sections 163 -167 inclusive. They provide as follows

Strata corporation may be sued

163 (1)The strata corporation may be sued as representative of the owners with respect to any matter relating to the common property, common assets, bylaws or rules, or involving an act or omission of the strata corporation.

(2)An owner may sue the strata corporation.

Preventing or remedying unfair acts

164 (1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair

- (a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or
- (b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

(2) For the purposes of subsection (1), the court may

- (a) direct or prohibit an act of the strata corporation, the council, or the person who holds 50% or more of the votes,

- (b) vary a transaction or resolution, and
- (c) regulate the conduct of the strata corporation's future affairs.

Other court remedies

165 On application of an owner, tenant, mortgagee of a strata lot or interested person, the Supreme Court may do one or more of the following:

- (a) order the strata corporation to perform a duty it is required to perform under this Act, the bylaws or the rules;
- (b) order the strata corporation 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).

Owner's liability for judgment against strata corporation

166 (1) A judgment against the strata corporation is a judgment against all the owners.

(2) A strata lot's share of a judgment against the strata corporation is calculated in accordance with section 99(2) or 100(1) as if the amount of the judgment were a contribution to the operating fund and contingency reserve fund, and an owner's liability is limited to that proportionate share of the judgment.

(3) Other than as set out in this section, an owner has no personal liability, in his or her capacity as an owner, for loss or damage arising from any of the following:

- (a) the management and maintenance of the common property and common assets by the strata corporation;
- (b) the actions or omissions of the council or strata corporation;
- (c) any contracts made or debts or liabilities incurred by or on behalf of the strata corporation.

Defending suits

167 (1) The strata corporation must inform owners as soon as feasible if it is sued.

(2) The expense of defending a suit brought against the strata corporation is shared by the owners in the same manner as a judgment is shared under section 166, except that an owner who is suing the strata corporation is not required to contribute.

Review of the Case Law Regarding The Jurisdictional Issue

[63] Neither of the parties has provided me with any case law relating to this jurisdictional issue nor dealt with it in their submissions.

[64] Accordingly, I have reviewed and considered a number of relevant Provincial Court of British Columbia cases. I will make reference to several of them. The cases reviewed and considered are as follows:

- a) *Matthews v. Strata Plan NW1874*, [2009] B.C.J. No 418 (Mathews)
- b) *Armanowski v. Strata Corp., Strata Plan LMS 2151*, [2011] B.C.J. No. 1942 (Armanowski)
- c) *Clappa v. Parker Management Ltd.* [2003] B.C.J. No. 1980 (Clappa)
- d) *Frechette v. Crosby Property Management Ltd.* [2007] B.C.J. No. 1162 (Frechette)
- e) *Stettner v. Strata Plan PG 56* [2011] B.C.J. No. 667 (Stettner)
- f) *Heliker v. Strata Plan VR 1395* [2005] B.C.J. No. 2424 (Heliker)
- g) *David v. Vancouver Condominium Services Ltd.* [1999] B.C.J. No 1869 (David)
- h) *Valana v. Law* [2005] B.C.J. No. 2820 (Valana)
- i) *Lou Guidi Construction Ltd. v. Fedick* [1994] B.C.J. No. 2409 (Fedick)

- j) *Strata Plan LMS2064 v. Biamonte* [1999] B.C.J. No. 1267 (Biamonte)
- k) *Lilloet Lakes Estates Ltd. v. Bodin* [2009] B.C.J. No. 1104 (Bodin)
- l) *0768548 BC Ltd. v. Strata Corp. Plan NW 2205* [2012] B.C.J. No. 2469 (Strata Corp. NW2205)

[65] In *Fedick*, Chief Judge Stansfield established the following general proposition about this Court's jurisdiction:

16 In short, as a general proposition, I conclude that a judge of this court should assume she or he has jurisdiction to hear every claim for debt or damages (other than defamation and malicious prosecution) where the claim is limited to \$ 10,000 or less, unless a party can demonstrate a statutory bar to that exercise of jurisdiction.

In *Matthews*, Judge Skilnick cited this foregoing passage of *Fedick* with approval and observed in paragraph 9 as follows:

9 This does not mean that a small claims court can assume jurisdiction on every claim that is brought. The Provincial Court of British Columbia is a creature of statute. In other words, as a general rule, before the court can make orders or render judgements, the court must first be given the authority to do so by the Legislature. If authority for the order can not be found, or if the Legislature expressly takes the authority to make that order away, or requires for the order to be made by another court or tribunal, then this court lacks the jurisdiction to make that order or render that judgement.

[66] Decisions of this Court have held that this Court does have jurisdiction in certain matters but not in all matters relating to the *Strata Property Act* and its predecessor the *Condominium Act*, RSBC 1996, c. 64.

[67] In *David* and in *Biamonte* it was held that under the *Condominium Act*, this Court has jurisdiction to hear certain disputes between strata owners and their strata corporations. However, this is dependent on the nature of the dispute and the nature of the remedy that is being sought.

[68] Biamonte concluded that the reference in certain sections of the *Strata Property Act* to a "court of competent jurisdiction" denoted both the *Provincial Court* and the *Supreme Court*.

[69] That reasoning was followed in *David* which went on to conclude that if a matter falls within the statutory jurisdiction of the Provincial Court (now set out in section 3 of the *Small Claims Act*) and the *Condominium Act* did not specifically reserve that jurisdiction for the *Supreme Court*, then the *Provincial Court* has jurisdiction to adjudicate that issue as a court of competent jurisdiction, (see paragraphs 25 to 27 inclusive). In *David* the court held that it had jurisdiction to deal with a claim brought in debt against a strata corporation for repairs undertaken by the strata owner pursuant to an agreement reached with the strata corporation's former strata property management company on behalf of the strata corporation, stipulating that full reimbursement would be made.

[70] In *Valana*, at paragraphs 11 through 28, Judge Chen provides a comprehensive review of those provisions of the *Strata Property Act* which specifically make reference to the exclusive jurisdiction of the *Supreme Court British Columbia*. He notes that the *Supreme Court* is specifically provided with jurisdiction to deal with matters under sections 164 and 165 of the *Strata Property Act*. *Valana* held that sections 164 and 165 were not exhaustive in describing the entire range of lawsuits that the strata owner may launch against the strata corporation. Such causes of action falling outside of the sections, including tort and contract, could be pursued in either the *Provincial Court* or the *Supreme Court*, but subject always to monetary and other limits to *Provincial Court's* jurisdiction. (see paragraph 37).

[71] *Valana* accepted the reasoning on the issue of jurisdiction established in *David* and *Baimonte* and based on Judge Chen's further analysis of jurisdiction, then permitted a third party claim in negligence against a strata corporation, that related to an alleged breach of a duty to repair, to be dealt with in the *Provincial Court*.

[72] *Valana* did not follow the reasoning set out *Clappa*. *Clappa* held that under the *Strata Property Act* it was only the *Supreme Court* that had jurisdiction to deal with any governance dispute involving the strata corporation's governance of the strata properties (see paragraph 21). That encompassed any matter relating to failure of a strata corporation to perform its obligations under that *Act* and any claims brought in negligence in connection with that failure. In *Clappa* the allegation of negligence arose out the duty to maintain and repair the common property.

[73] *Frechette* held that a claim by two owners for reimbursement of alleged past overpayments under a cost-sharing formula was based upon allegations that two separate strata corporations failed to act fairly and accordingly fell within the ambit of section 164 of the *Strata Property Act*. Therefore, that was within the jurisdiction of the *Supreme Court* and not the *Provincial Court*. The claim was characterized as not being a claim in negligence (see paragraph 16).

[74] In *Matthews*, the owner claimant sued for an order requiring the strata corporation to follow its bylaws and make repairs to windows in the claimant's unit that were alleged to be part of the common property. It was held that *Provincial Court* could not grant that remedy which is provided for in section 165 of the *Strata Property Act* and therefore which is specifically within the jurisdiction of the *Supreme Court*. The decision

reached in *Matthews* was consistent with the decisions in *Clappa* and in *Frechette* (see paragraph 12).

[75] *Matthews* was followed in *Stettner*. There the owners claimed reimbursement of \$400 from the strata corporation for a disputed shed removal from common property and an allegation by the claimant that there was a breach of section 71 of the *Strata Property Act* in failing to obtain a $\frac{3}{4}$ vote on an annual meeting resolution. Judge Dollis held that the matter raised brought the claim under sections 163, 164 and 165 of the *Strata Property Act* and hence within the *Supreme Court's* jurisdiction.

[76] *Armanowski*, a decision of Yule, J.P. provides a comprehensive review of most of the cases that I have considered and cited above. In *Armanowski* the claim was for recovery of an owner's share of a special levy paid for what were alleged to be engineering services ordered by the strata council that were alleged to be either never provided or were unnecessary. The defendant strata corporation characterized the pith and substance of the claim as a challenge to the decisions and actions of the strata council. Accordingly these were governance issues and fell within the jurisdiction of the Supreme Court.

[77] Yule, J.P. rejected the claimant's position that section 3(1)(c) of the *Small Claims Act* which gave the *Provincial Court* jurisdiction for claims for specific performance of an agreement relating to service applied to the claim. Instead he held that the claim could be characterized as one for monies owing or debt and therefore falling within section 3 (1) (a) of the *Small Claims Act*. He then concluded that the *Provincial Court* had

jurisdiction unless the *Supreme Court* had jurisdiction under section 164 of the *Strata Property Act* (see paragraph 25).

[78] The *Armanowski* decision then continues its analysis and says as follows:

26 I adopt the analysis of Dhillon, PCJ. in the *David* case and agree with Chen, PCJ. in the *Valana* case that the analysis remains valid following the introduction of the *Strata Property Act*. Thus not all disputes between unit owners and their strata corporation must be heard in the *Supreme Court of British Columbia*. It depends upon the nature of the unit owner's claim and whether it falls within the scope of Section 164 - 165 of the *Strata Property Act*. In the *David* case it was held that claims regarding misuse of corporate funds and claims as to irregularities of corporate governance properly fall to be decided in the *Supreme Court*.

27 The scope of Section 164 has been described using different language in the cases summarized above. I have already referred to the analysis of Dhillon, PCJ in the *David* case. In *Clappa*, the Court referred to a dispute involving the strata corporation's governance of the strata properties. In the *Valana* case the Court referred to actions that affect one's rights as a member of the strata corporation. In *Matthews*, the Court referred to seeking an order requiring the strata corporation to follow its bylaws. In *Frechette*, the Court referred to "significantly unfair actions", "oppressive conduct" or simply "a failure in governance".

[79] Applying this analytical framework to the case before him, Yule, J.P. concluded that the allegations being made by the claimant involved issues of corporate governance and decided that the claims must be brought in the *Supreme Court of British Columbia*.

[80] The decision in *Strata Corp. NW2205* adopted the analytical framework set out in *Armanowski*. Judge J.O'C. Wingham examined a claim seeking a determination by the court that a special resolution authorizing a special levy did not comply with the requirements of the *Strata Property Act* and sought the return of funds paid under the special levy. The alternative claim was framed in negligence, alleging negligence in the preparation of a deficient and confusing special resolution. It was held that despite the

negligence claim, the matter was clearly one of corporate governance and beyond the jurisdiction of the *Provincial Court*. (see paragraphs 22-25).

Applying the Case Law to the Jurisdictional Issue

[81] I agree with the analytical framework adopted by Yule, J.P. in *Armanowski* and apply it to the case before me.

[82] The Claimant seeks reimbursement for expenses incurred as a result of the Defendant Strata Corporation's failure to comply with its repair and maintenance duties under the bylaws. There is clearly an element of monies owing or debt recovery in this action, although there is no basis for a claim arising from an agreement, as was the case in *David*.

[83] However, in my view, the dispute falls squarely within what is contained within the scope of sections 164 and 165 of the *Strata Property Act*.

[84] The Claimant challenges the decision made by the Strata Council, on behalf of the Defendant Strata Corporation to deal with its repair obligations in a manner contrary to her own position.

[85] First, the Claimant demanded that the Strata Corporation deal with the repair issue in a timeframe convenient to the Claimant but not necessarily convenient nor practical for the Defendant Strata Corporation. Second, the Claimant insisted that the repair work, in the nature of the mould remediation, be completed in a particular fashion. When the Defendant Strata Corporation refused to meet the demands of the Claimant,

both in terms of timing and the approach to the repairs, the Claimant undertook the repair work and sought full compensation from the Defendant Strata Corporation.

[86] In my view, the basis of the Claimant's claim involves issues of corporate governance. The Claimant does not like the decision nor the approach of the Defendant Strata Corporation to the problem of mould remediation in her former strata lot. She seeks to challenge the outcome of those decisions and to impose her own solution on the Defendant Strata Corporation.

[87] Although the Claimant purports to seek to recover a debt, in essence she seeks a remedy for what she likely considers to be an unfair decision. That remedy is, in fact, a judgment to recover the monies that she has expended for mould remediation, in accordance with the plan that she has adopted. In my view that brings the dispute within the scope of section 164 of the *Strata Property Act*.

[88] Alternatively, she appears to be seeking a remedy, by way of a monetary judgment, for what she alleges to be a failure of the Defendant Strata Corporation to perform its repair duties under the bylaws. Again, she seeks to define the nature of that duty and the standard to which the Strata Corporation must adhere. In my view, this brings the dispute within the scope of section 165 of the *Strata Property Act*.

[89] Sections 164 and 165 of the *Strata Property Act* are within the jurisdiction of the *Supreme Court British Columbia* and not the *Provincial Court*. Accordingly, this Court does not have jurisdiction to deal with the Claimant's claim or the ultimate remedy being sought by her. When section 10 of the *Strata Property Amendment Act, 2009* is finally

brought into force the issues raised by this case will be within the jurisdiction of the Provincial Court. Unfortunately, that is not the present situation.

[90] I have decided this matter on the basis of a lack jurisdiction, and not on the merits of the claim. The parties were both self represented. It is understandable that neither appreciated the fine points of the jurisdictional issue, in what has been described as the overlapping but distinct jurisdictions of two trial courts (see *Bodin* at paragraph 38).

[91] Therefore, I will follow the approach adopted in *Bodin* and I will dismiss the claim, without prejudice to the Claimant's right to initiate an action in the *Supreme Court*.

[92] Since the matter has been decided on a jurisdictional issue that was not raised by either of the parties, each party will bear their own costs in this matter.

[93] There will be orders accordingly.

[94] In *Bodin*, Judge Baird Ellan noted the availability of an appeal of her decision which was similarly decided only on a question of jurisdiction. At paragraph 43, Judge Baird Ellan commented that an appeal to the *Supreme Court of British Columbia*

...in light of Section 13 of the *Small Claims Act* may permit the issues to be fully canvassed in the proper forum without (the claimant) having to initiate an action. The parties should be reminded, however, that no appeal would lie from that decision.

[95] I will leave it to the parties to seek whatever legal advice they consider necessary before proceeding further with this matter either in the Supreme Court by way of new action or by way of an appeal.

Analysis of the Issues If the Provincial Court Does Have Jurisdiction

[96] If I am incorrect and the *Provincial Court* does have jurisdiction, then it would be necessary for me to consider the issues of:

- a) whether the mould remediation falls within the Defendant Strata Corporation's repair and maintenance duties in bylaw 8 (1) (d) (i) or was it the duty of the owner under bylaw 2;
- b) if it is their duty did the Defendant Strata Corporation fulfil that duty;
- c) if it did not, then what was the Defendant Strata Corporation required to do in fulfilment of its duty;
- d) what if any amount should be recoverable by the Claimant for the mould remediation undertaken by the Claimant.

[97] Bylaw 8(1) (d) (i) and (ii) imposes upon the Defendant Strata Corporation the power and duty to "repair and maintain" the structure and the exterior of a building in a strata lot within the strata plan VIS 4116. Bylaw 2 does not impose structural repairs on an owner.

[98] The Canadian Oxford dictionary, second edition 2004 defines "repair" as follows:

- repair** *transitive verb* 1. restore to good condition after damage or wear.
2. renovate or mended by replacing or fixing parts or by compensating for loss or exhaustion. 3. set right or make amends for (loss, wrong, error etc.)

[99] The Canadian Oxford dictionary also defines "maintain" as follows:

maintain *transitive verb* 4. Preserve or provide for the preservation of (a building, machine, road, etc.) in good repair

[100] These definitions are consistent with the case authorities.

[101] Scott D. Smythe and E.M. (Lisa) Vogt in McCarthy Tétrault's Annotated *British Columbia Property Act* (2013 Canada Law Book) under the heading "Meaning of Repair", note as follows at SPA-80.6B:

In *Taychuk v. Strata Plan LMS774*, 2006 BCSC 1638, the court considered s.72(1) and adopted the following definition of "repair" found in *Burns v. National Coal Board*, [1957] S.C. 239 (Scot.), and cited with approval in *Sterloff v. Strata Plan No. VR2613* (1994), 38 R.P.R. (2d) 102 (B.C.S.C.) at p. 107:

"It is true that the primary meaning of the word 'repair' is to restore to sound condition that which has previously been sound, the word is also properly used in a sense of to make good. Moreover, the word is commonly used to describe the operation of making an article good or sound, irrespective of whether the article has been good or sound before."

[102] Under the heading "Duty to Repair is Different from Duty to Maintain", also found at SPA-80.6b, Smythe and Vogt state as follows:

In *Phillips v. Condominium Plan 9512639*, 184 A.C.W.S. (3d) 843 (Alta. Prov. Ct.), the court distinguished between the duty to repair and the duty

to maintain, indicating that the latter requires more than simply performing necessary repairs and that the existence of disrepair shifts the onus to the condominium corporation to show that, despite the disrepair, the condominium corporation acted with due diligence (at para.16)

While there can be no breach of a duty to repair until there has been disrepair, the duty to maintain or to keep in a state of repair may be breached before there is such disrepair. Depending upon the nature of the system, facility or fixture required to be maintained, a duty to maintain may imply a positive obligation to inspect, to test, to service, to clean, to lubricate, or some other form of preventive maintenance. And when a condominium unit holder suffers a loss as a result of condominium property falling into disrepair, there is an onus on the condominium corporation to adduce evidence of such due diligence. That is, where the condominium corporation has a contractual and/or a statutory duty to maintain, disrepair is prima facie evidence of a breach of the duty to maintain. Disrepair is not definitive proof of a breach of that duty. The mere fact that the roof in this case leaked is not conclusive proof of a breach of the duty to maintain; but it does shift the onus to condominium corporation to show due diligence.

[103] The Defendant Strata Corporation's initial position was that the floor sheathing subject of the mould infestation was not part of the structure of the building contained within the Strata Lot 72. They have now conceded that the floor sheathing is part of the structure of the building but not until after the Claimant obtained an engineering report from H. Gabe Le Bihan, P. Eng. dated January 13, 2013 (the "Engineering Report") which confirms that the floor sheathing is part of the structure of the building and as specified in the National Building Code. That brief Engineering Report cost the Claimant \$560. There is no doubt the floor sheathing is part of the structure of the building contained on Strata Lot 72.

[104] Furthermore, the initial position of the Defendant Strata Corporation appears to be that there was confusion as to whether or not the floor and the floor sheathing above the crawl space were part of Strata Lot 72, rather than part of the common property or limited common property. I have great difficulty understanding how this could have been a confusing problem for the Strata Corporation. Irrespective of this apparent confusion, the Defendant Strata Corporation has pursuant to bylaws 8(1) (b) and (c) a duty of repair and maintenance that extends to both to the common property and to the limited common property if it is part of the structure of the building, as here is the case.

[105] On a plain reading of bylaw 8 (d) and taking into account the authorities noted above, the duty to repair and maintain requires remediation of the mould contamination that apparently has been present in the crawlspace of Strata Lot 72 for a considerable period of time.

[106] The issue of the mould in the crawlspace was drawn to the attention of the Defendant Strata Corporation in 2005. Both the Claimant and the Defendant Strata Corporation failed to address the issue thereafter in a reasonably timely fashion. For that, they must each share responsibility.

[107] However, once the issue was again raised by the Claimant, during the course of the sale of her strata unit in 2010, the Defendant Strata Corporation did proceed to deal with the issue. There is no doubt that it took prudent steps to conduct an inspection and to obtain expert advice as to the extent of the problem and potential solutions for dealing with it. Having not dealt with the issue for some 5 years herself, the Claimant's

timeframe, while governed by the closing date of her real estate sale, was on the whole, unrealistic.

[108] The Claimant had reasonable cause for concern. The Claimant took appropriate steps in order to obtain advice. However, the report of the prospective purchaser's housing inspector, All in One, clearly identified that the mould problem had to be addressed. However, that house inspector's remediation advice cannot be taken to be the final word on the means by which the mould issue could or should have been correctly handled.

[109] The mould was clearly a concern of the prospective purchaser. The advice obtained both from the housing inspector as well as from Medallion Healthy Homes met all the concerns of the prospective purchaser. However, it was not the only possible solution available.

[110] The Defendant Strata Corporation also sought and obtained proper professional advice and made their decision as to what the extent of their repair and maintenance duty should be in these circumstances, based upon that advice. That professional advice from PEC and Mr. Wedman viewed the mould contamination in more benign terms than the All in One Report and Medallion Healthy Homes remediation estimate. The recommended approach of PEC was in my view, based upon the evidence before me, a reasonable approach.

[111] There is no doubt that the Medallion Healthy Homes' solution was more comprehensive in nature and likely a more long lasting solution than recommended by PEC and Mr. Wedman. However, the question must be asked using an Italian motor car

metaphor: is a Ferrari really necessary when a Fiat will provide the required transportation from point A to point B?

[112] The Fiat solution, being the PEC approach, described as “middle of the road” by Mr. Wedman was reasonable and adequate in the circumstances. The “high end” Ferrari solution proposed by All in One and Medallion Healthy Homes was of course preferred by a perspective purchaser and the Claimant. In my view, that solution was not really necessary in all of the circumstances.

[113] In *Weir v. Strata Plan NW 17* (2010), 95 C.L.R. (3d) 217 (B.C.S.C.) the *Supreme Court of British Columbia* examined a strata corporation’s approach to dealing with settling, leaking and drainage problems within a strata complex, in dealing with an application that sought relief under s. 165 of the *Strata Property Act*. The strata corporation had in fact obtained investigatory reports. In dismissing the claim, the court noted:

28 In resolving problems of this nature, there can be "good, better or best" solutions available. Choosing an approach to resolution involves consideration of the cost of each approach and its impact on the owners, of which there is no evidence before the court. Choosing a "good" solution rather than the "best" solution does not render that approach unreasonable such that judicial intervention is warranted.

[114] As Smyth and Vogt (supra) at SPA-80.6a conclude, relying upon *Sterloff v. Strata Plan No. VR 2613* (supra):

...in carrying out its duty to repair, a strata corporation must act in the best interests of all owners and endeavour to achieve the greatest good for the greatest number, and that involves implementing necessary repairs within a budget that the owners as a whole can afford and balancing competing needs and priorities.

[115] The PEC recommendation was adopted by the Defendant Strata Corporation who sought and obtained an estimate from ProPacific for implementing the recommendation at a total cost of \$1,612.80.

[116] It was not open to the Claimant to implement her own solution to the problem and expect the Defendant Strata Corporation to reimburse her. However, she did deal with the problem that otherwise would have been the duty of the Defendant Strata Corporation to repair. I do not take bylaw 5 as prohibiting the Claimant from undertaking the type of remediation completed by Medallion Healthy Homes in this case, without the written approval of the Strata Corporation. No alteration to the structure of the building flowed from the mould remediation. In these circumstances the Claimant should be entitled to reimbursement from the Defendant Strata Corporation in the amount of \$1,612.80. This is the amount, based on advice of their own expert, that the Strata Corporation would have been required to spend in fulfilment of their bylaw duty.

[117] Therefore, if this Court had jurisdiction to make an order, that is the judgment amount that I would award to the Claimant.

[118] Given that the Claimant obtained the Engineering Report in order to address the Defendant's incorrect position that the floor sheathing was not part of the structure of

the strata unit, I would award the Claimant, as part of her reasonable expense the cost of that Engineering Report in the amount of \$560.00. I would not reimburse the Claimant for any of her travel expenses except for the cost of the return ferry fares for each of the pre-trial conference and the two days of trial.

Orders

[119] For greater certainty, the only orders I am making are set out in paragraphs 91 and 92 above.

By the Court

The Honourable Judge J. P. MacCarthy