

Hugh Trenchard
805 637 Michigan Street
Victoria BC V8V 1S9

October 26, 2017

By Fax: 604-684-8075

Brian Slater
Property Manager
Westsea Construction Ltd.
Suite 2108 – 1330 Harwood Street
Vancouver BC V6E 1S8

Dear Mr. Slater,

Re: letter of October 24, 2017; letter of July 10, 2017 attaching Schedule of Operating Costs for the year ended December 31, 2016

I write with respect to your letter of October 24, 2017, and the Orchard House Schedule of Operating Costs for the year ended December 31, 2016, attached to a letter from Westsea Construction Ltd. dated July 10, 2017.

In your letter of October 24, 2017, you refer to a “projected increase of 38% for the 2018 Operating Expense budget. This increase is reflected in estimated increase to the management fees, legal fees, audit fees...”

First, I advise of my objection to Westsea’s assertion that it may claim **audit and management fees** as Operating Expenses under the lease. I make my objection further to the decision of *R. Denniger Ltd. v. Metro International General Partner Canada Inc.* (1992) 8 OR (3d) 720, among other law, which indicates that costs made in “the performance of duties that would normally be done by a landlord in its own interest” and “matters of internal management”, are not properly charged as Operating Expenses unless *expressly* stated to be so included as an Operating Expense. Please itemize the precise amounts you are claiming to be Operating Expenses under the categories of **management fees and audit fees**.

I am also requesting an itemization of the **legal fees** you are claiming as Operating Expenses, and the basis for your claim. If you are claiming these costs because of litigation in *Trenchard v. Westsea Construction Ltd.* SC 14-2941, I ask that you precisely identify the amount you are seeking.

I hereby advise that I refuse to pay any litigation costs associated with petition action 14-2941 and anticipate that you will commence an action through the Civil Dispute Resolution Tribunal <https://civilresolutionbc.ca/>, which has jurisdiction over small claims of less than \$5000, to recover that cost.

You are no doubt aware that the Court of Appeal in *Trenchard v. Westsea Construction Ltd* 44007 has indicated that you must make your demand for these costs, and that if leaseholders refuse to pay this cost, you must then commence litigation to recover those costs.

However, it is important that you isolate precisely the amount you are seeking in this respect so that I know what costs as set out in your October 24, 2017 letter I am prepared to pay, and what costs I am not prepared to pay.

I expect you are also aware that the Court of Appeal expressly stated that its decision did not impugn or support the interpretation of the lease by Mr. Justice MacKenzie. As you likely recall, he found that your litigation expenses incurred in relation to my petition action 14-2941 were not properly interpreted to constitute Operating Expenses under the lease. It is my position that this remains good law because this will be the likely result if you seek those costs from me by commencing an action to recover them, now that I have refused to pay them.

Further, in my view it is also important that you provide a breakdown of the litigation costs you are claiming, because the Court of Appeal specifically ordered that **no costs** of the Court Appeal action 44007 were recoverable from me or from the leaseholders. It is important, in my view, that leaseholders be assured that you are not attempting to recover those costs, nor the costs of *Trenchard v. Westsea Construction* action 16-3355 in relation to the question of who, under the lease, is required to pay for your \$5.5. million windows and doors replacement project.

If you are in fact seeking to recover any of the aforementioned other litigation costs, please state whether you are doing so.

Further, I ask for an explanation for the cost that is set out in the **Schedule of Operating Costs for the year ended December 31, 2016**, itemized as “**legal**” for \$6980. There were no such costs charged in 2015.

I look forward to your reply at your earliest convenience. Should it be preferable for your legal counsel to respond to me directly, I am copying them on this letter, and I look forward to their response at their earliest convenience.

Regards,


Hugh Trenchard

cc. Mark Stacey, Claire Immega
Singleton Urquhart, Barrister & Solicitors 604-682-1283

Selected other Orchard House leaseholders