



ARVAY FINLAY LLP

File No: 20840

15 July 2024

DRAFT

VIA EMAIL

Singleton Urquhart Reynolds Vogel LLP
925 W. Georgia St., Suite 1200
Vancouver, BC V6C 3L2

Attention: M.C. (Mark) Stacey

Dear Mr. Stacey:

Re: Additional information on operating expenses at Westsea Towers

We write on behalf of Mr. Eberhard Kobler, a leaseholder in unit 1204 Westsea Towers, to request additional information about operating expenses incurred at Westsea Towers. We understand the lease agreement at Westsea Towers includes the following term (highlights added):

Article 7.01

“Operating expenses” in this Lease means the total amount paid or payable by the Lessor in the performance of its covenants herein contained... and includes legal and accounting charges and all other expenses paid or payable by the Lessor in connection with the building, the common property therein or the Land.

“Operating expenses” shall not include any amount directly chargeable by the Lessor to any lessee or lessees. The lessor agrees to exercise prudent and reasonable discretion in incurring operating expenses, consistent with its duties hereunder.

Mr. Kobler advises that his previous requests for information have been denied on the basis that there is no provision in the lease for leaseholders to approve or obtain detailed disclosure about any specific category of operating expenses. In our view, this narrow interpretation is not supported by the Lease. Leaseholders must have access to information about operating expenses incurred under Article 7 in order to assess whether Westsea Construction is complying with its obligation to “exercise prudent and reasonable discretion in incurring operating expenses”. This is the only reasonable interpretation of the Lease that is consistent with the surrounding circumstances of the agreement. Without such accountability and transparency, Westsea’s obligation to exercise prudent and reasonable discretion is rendered meaningless.

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We therefore repeat Mr. Kobler's requests for the following information:

- A detailed description of the \$695,643 in legal costs charged to leaseholders as operating expenses in the years 2017-2022 (privacy concerns can be addressed by redacting leaseholders' personal information), including clarity as to whether legal costs Westsea incurred from its petition BCSC Court File No. VLC-S-S-2011436 were charged to leaseholders including Mr. Kobler;
- A copy of the consultant report for the rehabilitation project that ended in 2019 and a copy of the consultant report for the Fire and Alarm System Replacement Project;
- Additional information about the \$420,473 for Maintenance and Repair in 2022; and
- A breakdown of the \$1,258,860 budgeted for 2024, including the total amount per line item.

The requests for information are similar to the information sought by Mr. Trenchard and which the Court commented were "legitimate requests" that "would have been relatively simple and inexpensive for Westsea to comply".¹

If disclosure is not received by July 19, 2024, we may commence proceedings seeking such information without further notice to you.

ARVAY FINLAY LLP

Per:

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DWW/kw

¹ *Trenchard v. Westsea Construction Ltd.*, 2016 BCSC 1752, para. 23, rev'd 2017 BCCA 352 but not on this point