No. 184015
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WESTSEA CONSTRUCTION LTD.

PETITIONER

AND:

ANDREW SCOTT TAYLOR, DOUGLAS GEORGE ROUTLEY, LEANNE FINLAYSON, EDITH WOOD, GERALD JOHN ROTERING, HELEN ELISABETH VERWEY, HUGH ALEXANDER TRENCHARD, IRIS IRENE HAYS, JACALYN GAIL HAYS, JUDITH MCNEIL SIM, MARTINE GODDARD, PATRICIA ANNE SMITH, PETER JAMES ROURKE, REINER JAOCHIN PIEHL, DOREEN GREETA PIEHL, SANDRA SCOTT JONSSON ALSO KNOWN AS SANDRA SCOTT GROVE-SAGER, GORDON WILLIAM GROVE and SEE-LIN SHUM

RESPONDENTS

WRITTEN SUBMISSIONS OF THE RESPONDENTS, ANDREW SCOTT TAYLOR, EDITH WOOD, GERALD JOHN ROTERING, HELEN ELISABETH VERWEY, JACALYN GAIL HAYS, MARTINE GODDARD, PATRICIA ANNE SMITH, REINER JOACHIN PIEHL, DOREEN GRETA PIEHL and SU-LIN SHUM

RE [Petition Hearing] [Submitted pursuant to the direction of Justice Gaul]

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Date and Time of Petition: 17 Nov 2025, 10 am
Place of Petition: Victoria, BC
Time Estimate of the Petitioner: 10 days
Time Estimate of the Respondents: 10 days
To be heard before: ☒ Judge

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PART I. OVERVIEW

1. This petition turns on a straightforward matter of contract interpretation.

2. The contract in question is a 99-year lease agreement, entered into on May 17, 1974 (the "**Lease**"). The Lease governs the relationship between the respondents, who are each individual leaseholders, and the petitioner, Westsea Construction Ltd. ("**Westsea**"), who is the lessor.

3. The respondents lease units at 647 Michigan St, Victoria, BC, a 211-unit high rise known as Orchard House ("**Orchard House**").[1]

4. Between 2017 and 2020, Westsea was involved in litigation against Hugh Alexander Trenchard, one of the Orchard House leaseholders. In the course of this litigation, Westsea apparently incurred more than $1.3M in costs for legal services. It passed the cost of these legal services on to the Orchard House leaseholders.

5. Westsea says it is entitled to charge the Orchard House leaseholders, including the respondents, for legal services it obtained in the course of litigation against Mr. Trenchard (the "**Trenchard Litigation**") because these fees are "operating expenses" (**Operating Expenses**") as defined in the Lease.

6. This position ignores precedent and the language of the Lease itself.

7. The respondents submit that this Court is bound on the issue of the interpretation of the Lease by the recent decision of Milman J. in *Gray v. 1534 Harwood Street (St. Pierre) Ltd.*, 2025 BCSC 1758. In *Gray*, Milman J. found the lessor "had no right under the lease to charge its legal fees in this and related litigation to the tenants as operating expenses".[2]

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[1] Affidavit #1 of Brian Slater, made September 10, 2018 ("Slater #1") Ex. 3-24, pp. 46-334
[2] *Gray v. 1534 Harwood Street (St. Pierre) Ltd.*, 2025 BCSC 1758, at para. 126. [*Gray*]

8. The text of the lease agreement in *Gray* is identical to the Lease in this case. The meaning of Operating Expenses is clear and unambiguous: Operating Expenses do not include legal fees the lessor incurred while defending itself in litigation brought against it by leaseholders who seek to enforce the lease.[3]

9. The Trenchard Litigation was litigation brought by a leaseholder seeking to enforce the Lease. Westsea's legal fees were therefore not incurred in the course of *performing* its covenants, but rather while defending itself against allegations it breached the Lease.

10. Despite this, Westsea charged the Orchard House leaseholders for legal fees relating to the Trenchard Litigation in 2017, 2018, 2019, and 2020. When some of the respondents objected to these relatively modest charges, Westsea initiated this petition.

11. It now asks the Court to find the respondents in default, and to make disproportionate and draconian orders, including for the sale of the respondents' suites. Some of the respondents have already paid their arrears,[4] and there can be no plausible claim against them.

12. The Court should dismiss this petition. There is no support in the case law, or the language of the agreement itself, for finding the respondents responsible for paying the legal fees Westsea incurred in the Trenchard Litigation. As such, there is no basis on which to make the orders sought.

PART II. FACTS

A. The Lease

1. The term of the Lease runs for 99 years. It began on March 1, 1974 and it will expire on December 31, 2073.[5]

2. The respondents agree that the Lease is not governed by statute. Neither the *Commercial Tenancy Act*, R.S.B.C. 1996, c. 57 nor the *Residential Tenancy Act*, S.B.C., c. 78 apply.[6]

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[3] *Gray* at para. 121.
[4] Affidavit #1 of May Al-Taher, made August 19, 2025 (Al-Taher #1) at para. 6, Ex. J at 93, Ex. L at 118, and Ex. M at 131.
[5] Slater #1, Ex. 2 at 22.
[6] Written Submissions of the Petitioner, Part 3 at para. 58 [Petitioner's Written Submissions]; *Residential Tenancy Act*, s. 4(i); *Commercial Tenancy Act*

3. Article 7 of the Lease concerns Operating Expenses. Article 7.01 defines the term Operating Expenses:

> 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** (save and except those contained in Article 5.11) **and includes but without restricting the generality of the foregoing**, the amount paid or payable by the Lessor in connection with the maintenance, operation and repair of the Building, expenses in heating the common areas of the Building and each of the Suites therein (unless any of the Suites are equipped with their own individual and independent heating system in which event the cost shall be payable by the Lessee of any such suite) and providing hot and cold water, elevator maintenance, electricity, window cleaning, fire, casualty liability and other insurance, utilities, service and maintenance contracts with independent contractors or property managers, water rates and taxes, business licenses, janitorial services, building maintenance service, resident manager's salary (if applicable) an [sic] **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 Lands. "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.**[7]

4. Articles 7.02-7.04 set out a process for Westsea to estimate and charge the leaseholders for a proportionate share of Operating Expenses each calendar year.[8] Under Article 7.02, Westsea must provide leaseholders with an estimate of Operating Expenses for the upcoming year at the start of each calendar year. Leaseholders are responsible for paying a share of the total Operating Expenses, based on the total area of their Suite. They must pay one twelfth of their share of the expenses every month.

5. Article 5 of the Lease establishes the Lessor's Covenants. This provision is relevant to the case at hand because Operating Expenses are defined under Article 7.01 as the amount paid or payable by the Lessor "in the performance of its covenants herein contained".

6. In general, the covenants in Article 5 relate to the maintenance and operation of the building. Pursuant to Article 5:

> The Lessor covenants with the Lessee:
>
> 5.01 For quiet enjoyment;

[7] Slater #1, Ex. 2 at 27 [Emphasis added].
[8] Slater #1, Ex. 2 at 28-29.

5.02 To provide heat to all common areas of the Building and to each of the Suites (unless any of the Suites contain or are equipped with an independent heating system) to an extent sufficient to maintain a reasonable temperature therein at all times except during the making of repairs.

5.03 To keep in good repair and condition the foundations, outer walls, roofs, spouts and gutters of the Building all of the common areas therein and the plumbing, sewage and electrical systems therein.

5.04 To keep the entrance halls, staircases, corridors and other like areas in the Building clean and properly lighted and heated and the elevators properly lighted and in good working order.

5.05 The Lessor shall provide or engage the services of such staff as may be requisite for the proper care and servicing of the Building.

5.06 To pay taxes.

5.07 To provide passenger elevator service except during the making of repairs.

5.08 To keep the Building insured against loss or damage by fire, lightning or tempest or any additional peril defined in standard fire insurance additional peril supplemental contract which insurance to the best of the ability of the Lessor shall be to the full insurable value of the Building excluding foundations and excavations.

5.09 To maintain a policy or policies of general public liability insurance against claims for bodily injury, death or property damage arising out of the use and occupancy of the Building, such insurance to be in such amount as the Lessor may from time to time determine.

5.10 To the extent that the service is available to provide cablevision and front door intercommunication service to each of the Suites in the Building.

5.11 To observe and perform all the terms, covenants, provisions and agreements contained in any prior charge and without restricting the generality of the foregoing, to make all payments of money required to be made thereunder on their due dates. Prior charge shall include any mortgage now constituting a charge upon the Lands and Building.[9]

B. The Trenchard Litigation

7. The Trenchard Litigation relates to two matters. In 2014, Mr. Trenchard filed a petition in the Supreme Court of British Columbia, naming Westsea as the respondent (the "**Trenchard**

[9] Slater #1, Ex. 2 at 25-26.

Petition").[10] In 2017, Mr. Trenchard filed a Notice of Civil Claim against Westsea (the "**Trenchard NOCC**").[11]

8. Between 2015 and 2017, Westsea undertook a remediation project, which included replacing some of the windows and sliding doors at Orchard House (the "**Project**").[12] Mr. Trenchard's allegations in both the Trenchard Petition and the Trenchard NOCC relate to Westsea's conduct leading up to and during the Project.

9. In the Trenchard Petition, Mr. Trenchard sought disclosure of information about the proposed replacement of windows and doors as part of the Project at Orchard House.[13] Among other orders, he asked the Court to find the Lease contained an implied term of "transparency", to declare that Westsea had breached this term, and to declare that Westsea was required to share documents "in relation to a special assessment for proposed work on windows and doors of Orchard House".[14]

10. After four days of hearing, Mr. Trenchard and Westsea reached a settlement agreement.[15] Justice Mackenzie dismissed the Trenchard Petition on the condition that Westsea commit to providing leaseholders at Orchard House with a copy of an engineering report on the replacement of windows and doors, including the scope of work and anticipated costs.[16]

11. The question of costs remained. On September 23, 2016, Mackenzie J issued his reasons in *Trenchard v. Westsea Construction Ltd.*, 2016 BCSC 1752. He found that the Lease did not authorize Westsea to "seek recovery of the legal costs it incurred in [the Trenchard Petition] proceedings from the leaseholders as 'Operating Expenses'" because "Westsea did not incur such legal costs in the performance of the covenants of the lease agreement and they are not payable by Westsea 'in connection with the building.'"[17]

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[10] Affidavit #1 of Hugh Trenchard, made October 18, 2018 ("Trenchard #1) at para. 31; Affidavit #1 of Julie Trache, made January 11, 2021 (Trache #1), Ex. A.
[11] Trenchard #1 at para. 37; Trache #1, Ex. G.
[12] Slater #1 at paras. 44-46.
[13] *Trenchard v. Westsea Construction Ltd.,* 2016 BCSC 1752 at paras. 4-5 [*Trenchard BCSC 2016*].
[14] Trache #1, Ex. A at 3.
[15] *Trenchard BCSC 2016* at para. 5.
[16] Trache #1, Ex. E at 54.
[17] *Trenchard BCSC 2016* at para. 17.

12. Westsea appealed Mackenzie J's decision and the Court of Appeal for British Columbia allowed the appeal in part.[18] It held that the issue of whether legal fees were Operating Expenses was not properly before the lower court because it was premature. It also found it was wrong for Westsea to have urged the court to make a premature ruling on the matter, and that it "incurred additional legal expenses" pursing a determination at both the Supreme Court and Court of Appeal.[19]

13. The appellate Court refused to comment on the proper interpretation of the Lease, explicitly stating: "Nothing in these reasons should be construed as impugning or supporting the interpretation of the Lease in the court below."[20]

14. Westsea and Mr. Trenchard appealed and cross appealed the Court of Appeal's decision but the Supreme Court of Canada denied leave.[21]

15. Mr. Trenchard filed the Trenchard NOCC in August 2016. In this claim, Mr. Trenchard alleged that Westsea breached the Lease by improperly charging the costs associated with the new windows and doors as Operating Expenses under Article 7.[22]

16. In reasons for judgment issued on July 9, 2020, Douglas J. held that Westsea was required to undertake the Project, including the window and door replacement, pursuant to its covenants under Article 5.03. She also found Westsea was entitled to charge the leaseholders for the cost of the project as Operating Expenses.[23]

17. The Court of Appeal upheld this decision.[24]

C. Legal Fees Arising from the Trenchard Litigation

18. In 2017, Westsea began passing the cost of legal fees in the Trenchard Litigation onto the leaseholders at Orchard House, including the Respondents.

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[18] *Trenchard v. Westsea Construction Ltd.*, 2017 BCCA 352 [*Trenchard BCCA 2017*]
[19] *Trenchard BCCA 2017* at para. 7.
[20] *Trenchard BCCA 2017* at para. 13.
[21] *Hugh Alexander Trenchard v. Westsea Construction Ltd.*, 2018 CanLII 73618.
[22] Trache #1, Ex. G at 68.
[23] *Trenchard v Westsea Construction Ltd.,* 2019 BCSC 1675 paras. 109-110; 138-139 [*Trenchard BCSC 2019*].
[24] *Trenchard v. Westsea Construction Ltd.*, 2020 BCCA 152.

19. According to Westsea's Schedules of Operating Costs from 2017 and 2020, the "recoverable" Operating Expenses for each year were:

a. $4,692,462 in 2017;[25]

b. $1,118,993 in 2018;[26]

c. $1,368,254 in 2019;[27] and

d. $1,521,843 in 2020.[28]

20. Westsea admits that a "considerable portion" of the purported Operating Expenses from 2017 to 2020 are directly attributable to their legal fees in the Trenchard Litigation.[29]

21. During these years, Westsea incurred $1,341,721.97 in legal fees relating to the Trenchard Litigation. The breakdown of this total is as follows:

a. $293,541.64 in Trenchard Litigation legal fees in 2017;[30]

b. $345,795.06 in Trenchard Litigation legal fees in 2018;[31]

c. $552,634.41 in Trenchard Litigation legal fees in 2019;[32] and

d. $149,750.86 in Trenchard Litigation legal fees in 2020.[33]

22. Many of the Leaseholders objected to paying for Westsea's legal fees as part of their Operating Expenses. Eleven filed small claims in the Provincial Court of British Columbia. Four leaseholders, all of whom are respondents on this petition, wrote to Westsea raising their objections to the expenses and enclosing cheques for a percentage of their proportion of the total expenses, but refusing to pay for the legal fees. [34]

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[25] Trache #1, Ex. T at 180; note: This number includes $3,882,063 for "Special Assessment", which relates to the Project.
[26] Trache #1, Ex. U at 186.
[27] Trache #1, Ex. V at 192.
[28] Affidavit #2 of May Al-Taher, made August 19, 2025, Ex. C at 9.
[29] Petitioner's Written Submissions, Part 1 at para. 75.
[30] Affidavit #2 of Tina Le, made April 26, 2022, Ex. 36 at 1585.
[31] Le #2, Ex. 36 at 1586.
[32] Le #2, Ex. 36 at 1587.
[33] Le #2, Ex. 38 at 1609-1610.
[34] Slater #1, Ex. 26-30 at 335-352

PART III. ISSUES

1. The Petition turns on whether Westsea was entitled under the Lease to charge the respondents for the legal fees it incurred during the Trenchard Litigation. The key question is:

> a. Does the definition of Operating Expenses under Article 7.01 of the Lease include legal fees Westsea incurred while defending itself in litigation brought against it by a leaseholder who sought to enforce the lease?

2. If the costs Westsea incurred during the Trenchard Litigation are not Operating Expenses, then the respondents are not in default. It follows that the Court should decline the remedies the Petitioner seeks.

PART IV. Discussion

A. The decision in *Gray* is determinative

1. The key issue in this matter can be resolved by applying this Court's reasons in *Gray* and principles of contractual interpretation.

2. As a matter of horizontal *stare decisis*, *Gray* is binding on the issue of the interpretation of the contract. The lease in *Gray* is essentially identical to the lease that governs the lessor and leaseholders at Orchard House.[35] Like the petition at issue here, the "main issue in dispute" between the parties in *Gray* was whether the defendant, a lessor, could pass its legal bills to the tenants, the plaintiffs, as Operating Expenses under the lease.[36] Justice Milman found the lessor had no right to do so.[37]

3. None of the *Hansard Spruce Mills* criteria are found here. As the Supreme Court of Canada has said:

> The principle of judicial comity — that judges treat fellow judges' decisions with courtesy and consideration — as well as the rule of law principles supporting stare decisis mean that prior decisions should be followed unless the Spruce Mills criteria are met. Correctly stated and applied, the Spruce Mills criteria strike the appropriate balance between the competing demands of certainty, correctness and the even-handed development of the law. Trial courts should only depart from binding decisions issued by a court of coordinate jurisdiction in three narrow circumstances:

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[35] There are some minor non-material differences, such as the named parties and relevant land title office
[36] *Gray* at para. 115.
[37] *Gray* at para. 126.

1. The rationale of an earlier decision has been undermined by subsequent appellate decisions;

2. The earlier decision was reached per incuriam ("through carelessness" or "by inadvertence"); or

3. The earlier decision was not fully considered, e.g. taken in exigent circumstances.[38]

4. The Supreme Court of Canada has also held that the interpretation of a standard form contract has precedential value and that, when interpreting standard form contracts, "precedent is more likely to be controlling".[39]

5. Justice Milman interpreted the language of the agreement in *Gray*. He found that the language of the lease constrained the meaning of Operating Expenses and made the following key findings which are also applicable here:

a. The definition of Operating Expenses only extends to legal fees incurred in the performance of covenants under the Lease;[40]

b. Operating Expenses are exclusive of "…any amount directly chargeable by the Lessor to any Lessee or Lessees…";[41]

c. The landlord's legal fees were not incurred in the performance of a covenant, but in the course of defending the manner in which it performed (or failed to perform) its covenants;[42] and

d. There is no covenant that requires the landlord to defend itself in litigation brought by a leaseholder with a view to enforcing the lease.[43]

e. Operating Expenses must be exercised prudently and reasonably. [44]

6. Throughout its submissions, Westsea attempts to distinguish the case at hand from *Gray*. However, these distinctions are not relevant.

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[38] *R. v. Sullivan*, 2022 SCC 19, para. 75.
[39] *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37 at paras. 39 and 43.
[40] *Gray* at para. 115.
[41] *Gray* at para. 115.
[42] *Gray* at para. 117.
[43] *Gray* at paras. 118-122.
[44] *Gray* at paras. 115 and 124.

7. For example, the Petitioner argues that *Gray* can be distinguished from the Trenchard Petition litigation because, in *Gray*, the lessors sought to imply a term of the lease that would require an auditor to certify Operating Expenses while Westsea, on the other hand, "has consistently submitted annual accountings of Operating Expenses for auditors' certification."[45] This has no bearing on the case at hand.

8. The question does not turn on whether the Lease obliges Westsea to submit Operating Expenses to an auditor or whether it has performed such a duty. The question turns on whether Westsea incurred legal fees from the Trenchard Litigation in the performance of its covenants, or in defending the manner in which it performed or failed to perform its covenants.

9. The Petitioner further attempts to distinguish from *Gray* on the basis that the circumstances in the case at hand are "fundamentally different" because the leaseholders in *Gray* alleged that the lessor breached the lease by failing to perform it covenants.[46]

10. Again, this is not a material difference. In both *Gray* and the Trenchard Litigation, the plaintiff/petitioner leaseholders alleged breach of contract. Even though the Petitioner characterizes the claim in *Gray* as alleging "explicit breaches" based on a failure to act, there is no separate cause of action for "explicit" breach of contract and no distinction between breaches that arise from an alleged failure to act, as in *Gray* and the Trenchard Petition, or from allegedly improper acts, as in the Trenchard NOCC.[47] The outcomes may have been different, but the underlying claims are analogous.

11. Indeed, Westsea itself says that Milman J's decision regarding the "transparency-like relief sought by the plaintiffs in [*Gray*]" is similar to the relief sought in the Trenchard Petition.[48] Given the similar claims in both proceedings, it stands to reason that Milman J's decision should apply equally to this case. As in *Gray*, the legal fees the lessor incurred defending against that relief sought are not Operating Expenses.

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[45] Petitioner's Written Submissions, Part 3 at paras. 34-35.
[46] Petitioner's Written Submissions, Part 3 at para. 90.
[47] Petitioner's Written Submissions, Part 3 at para. 91.
[48] Petitioner's Written Submissions, Part 3 at paras. 36-38.

12. In short, Milman J already interpreted the contractual language at issue here in *Gray*. Following that precedent, this Court must come to the same conclusion on the interpretation of the contract, which inevitably leads to the conclusion that Westsea had no contractual right to charge the Orchard House leaseholders for its Trenchard Litigation legal fees.

i. The legal fees were not incurred in the *performance* of a covenant

13. Justice Milman found that the legal fees at issue in *Gray* were not "paid or payable" in the performance of the lessor's covenants under the lease. He found that, at most, the legal fees were amounts "paid or payable *because of the manner in which those covenant were (or were not) performed*".[49]

14. This is directly applicable here. Westsea did not incur the Trenchard Litigation legal fees in the act of installing new windows and doors during the remediation project. If it had, these fees would have appropriately fallen under Operating Expenses, because, as Douglas J found, they would have been properly incurred in the *performance* of Westsea's covenant to keep the condition of the building foundations and outer walls in good repair.[50]

15. Instead, Westsea incurred the legal fees while defending *the manner in which* it performed or failed to perform its covenants: namely, its decisions regarding whether to disclose documents related to replacing the windows and doors, and the fact it ultimately undertook the Project and charged the tenants for it. Mr. Trenchard alleged these actions amounted to breaches of the Lease.

ii. There is no lessor covenant to defend itself in litigation

16. Justice Milman further found that the landlord's covenants under the agreement "do not include an obligation to defend itself in litigation brought against it by one or more of the tenants with a view to enforcing the lease."[51] Again, this finding is directly applicable to the case at hand.

17. In both the lease in *Gray* and the Orchard House Lease, Article 7.01 states that Operating Expenses "include" a variety of charges.[52] Justice Milman reviewed the enumerated charges and

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[49] *Gray* at para. 117, emphasis in original.
[50] *Trenchard BCSC 2019* at paras. 54-56.
[51] *Gray* at para. 121, emphasis added.
[52] Slater #1, Ex. 2 at 27.

observed that the "touchstone" for inclusion on the list under Article 7.01 is the performance of the landlord's covenants under Article 5.[53]

18. Justice Milman found that the landlord may properly incur some types of legal fees in the performance of its covenants under Article 5.[54] For example, under Article 5.08, the Lessor covenants to "keep the Building insured against loss or damage by fire[…]". It is likely that legal fees incurred in the course of enforcing an insurance contract could be properly chargeable as Operating Expenses.

19. Similarly, it is conceivable that the lessor could incur legal fees while fulfilling its covenant to pay taxes under Article 5.06, and that these fees could qualify as Operating Expenses because they were incurred "in the performance of its covenants".

20. In both the lease in *Gray* and the Orchard House Lease, however, the language of the agreement and the covenants under Article 5, in particular, do not create an obligation for the landlord to defend itself in litigation against a leaseholder who claims the lessor has breached the lease.[55]

21. Westsea submits the Trenchard Litigation concerned its lessor covenant under s. 5.03.[56] Pursuant to this provision, the lessor covenants:

> To keep in good repair and condition the foundations, outer walls, roofs, spouts and gutters of the Building, all of the common areas therein and the plumbing, sewage and electrical systems therein.[57]

22. In *Trenchard BCSC 2019*, Douglas J found that this covenant includes an obligation to repair or replace windows and doors which have deteriorated and undermine the structural integrity of the building foundation and outer walls falls.[58] The cost of the Project, therefore, properly fell under the performance of a covenant and Westsea was within its rights to charge the leaseholders for it.

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[53] *Gray* at para. 118.
[54] *Gray* at para. 122.
[55] *Gray* at para. 121.
[56] Petitioner's Written Submissions, Part 3 at para. 29.
[57] Slater #1, Ex. 2 at 25.
[58] *Trenchard BCSC 2019* at para. 54.

23. The cost of legal fees incurred defending whether it had breached its covenants leading up to and during the Project, however, is a separate matter.

24. The Petitioner argues that it was obligated to defend against the Trenchard Petition because, if Mr. Trenchard had been successful "the Lessor's ability to keep Orchard House in good repair and condition could have been bottlenecked by judicially imposed requirements well beyond the terms of the lease."[59] It similarly argues that, had Mr. Trenchard been successful on the Trenchard NOCC, "Westsea's ability to perform its covenants to keep the building in good repair and condition would have been jeopardized".[60]

25. First, these assertions mischaracterize the potential outcomes of the Trenchard Litigation. If Mr. Trenchard had been successful in the Trenchard Petition, any resulting obligations would have been in accordance with how the Court interpreted Westesea's *existing* duties under the Lease, not the result of additional "judicially-imposed requirements". If Mr. Trenchard had been successful on the Trenchard NOCC, then Westsea's ability to perform its covenants under the lease would not have been impacted because the Court would have found that the window and door replacement fell *outside* the lessor's covenants.

26. Furthermore, these arguments are analogous to the unsuccessful arguments the lessor made in *Gray*. In *Gray*, the lessor argued that it needed to defend itself in litigation, "not for its own benefit, but for the benefit of the other tenants."[61] The lessor submitted that, if it had not advanced a defence, the plaintiffs would have obtained default judgment, which would have been detrimental to all the tenants because the landlord would have paid this judgment out of its operating costs.[62]

27. Justice Milman found that this argument confused the lessor's own interests with those of the tenants.[63] The same is true here. Westsea's motivation for defending itself was not to protect the leaseholders, but rather its own interests.

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[59] Petitioner's Written Submissions, Part 3 at para. 39.
[60] Petitioner's Written Submissions, Part 3 at para. 48.
[61] *Gray* at para. 119.
[62] *Gray* at para. 120.
[63] *Gray* at para. 120.

28. This is particularly clear when considering the $137,257.47 in legal fees Westsea incurred in 2017 and the $3,740.27 it incurred in 2018[64] while appealing MacKenzie J's decision on costs in the Trenchard Petition. In this appeal, Westsea took the position that it should be entitled to pass the costs of *its* legal fees onto leaseholders. It is difficult to understand how that stance could be described as acting in the leaseholders' interests.

29. Westsea's defence on the merits of the Trenchard Petition was also not for the benefit of the tenants. Indeed, Mr. Trenchard sought, and succeeded in obtaining disclosure for all tenants regarding Westsea's windows replacement. That disclosure was beneficial to the tenants.

30. Westsea's defence in the Trenchard NOCC was also not to the sole benefit of the tenants. Indeed, had Mr. Trenchard succeeded, Westsea would have been liable for the costs of the window and doors replacement, rather than the tenants.

31. Westsea submits that the decision in *Gray* is "premised on inaccurate interpretation of the lease" because Milman J only considered covenants under Article 5 when he found that there was no covenant for the lessor to defend itself in litigation.[65] It submits that "it is inaccurate to say that the Trenchard Litigation Charges must have been incurred in performance of Westsea's covenants under Article 5 of the Lease."[66]

32. In support of this argument, Westsea takes the position that Article 5 does not contain all of its covenants under the Lease. It submits that the Lessor has additional obligations in other sections of the agreement, including:

a) an implied "obligation to replace fixtures" under article 4.03, which concerns the Lessees' Covenants,

b) an obligation to "repair any part of Orchard House damaged by fire or other casualty against which Westsea has a covenant to insure," under Article 8.01

c) and an obligation to provide any consent, approval, or permission under the rules and regulations at Schedule B to the Lease in writing.[67]

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[64] Le #2, Ex. 36 at 1585-1586.
[65] Petitioner's Written Submissions, Part 3 at para. 25.
[66] Petitioner's Written Submissions, Part 3 at para. 27.
[67] Petitioner's Written Submissions, Part 3 at paras. 13-15, 17, 18-19, 26.

33. This argument is without merit.

34. First, Westsea itself says that its participation in the Trenchard Litigation was related to its covenant under Article 5.03.[68]

35. Second, even if this Court were to accept that Westsea has covenants beyond Article 5 that inform the definition of Operating Expenses under Article 7, Westsea does not explain how its legal fees from the Trenchard Litigation arose in the performance of any of these supposed additional covenants. Indeed, it would be implausible to suggest the legal fees were incurred while replacing fixtures pursuant to any duty under Article 4.03, while repairing damage from fire or another insurable risk under Article 8.01, or while providing written consent, approval, or permission under the rules and regulations at Schedule B.

iii. Litigation fees were not reasonable and prudent

36. Applying the interpretation of the contract from *Gray* to the facts of this case, it is clear that Westsea did not incur legal fees in the Trenchard Litigation while performing a covenant under the Lease. This is enough to dispose of the matter.

37. However, even if it could be said that Westsea incurred the legal fees while performing a covenant under the Lease, it did not exercise reasonable and prudent discretion when doing so.

38. Beyond finding that the legal fees in *Gray* were not incurred in the performance of the landlord's covenants, Milman J found that the fees were not incurred reasonably and prudently.[69] The respondents submit that the same can be said here, but for different reasons.

39. In their ordinary and grammatical meaning, both prudence and reasonableness are related.

40. The Supreme Court of Canada considered the ordinary meaning of the word prudence in in *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*. While decided in the context of a utilities regulatory statute, the Supreme Court of Canada's definition is helpful: "In its ordinary meaning, a prudent expense is one that is wise or sound."[70]

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[68] Petitioner's Written Submissions, Part 3 at para. 29.
[69] *Gray* at para. 124.
[70] *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission),* 2015 SCC 45 at paras. 34, 38. [*ATCO*]

41. In some contexts, there may be no difference between a cost that is prudent and one that is reasonable.[71] In such circumstances, "[i]t would not be imprudent to incur a reasonable cost, nor would it be prudent to incur an unreasonable cost". The respondents submit that this applies here.

42. Westsea did not exercise reasonable or prudent discretion in incurring the legal fees.

43. With regards to its response to the Trenchard Petition, Westsea could have avoided much of the cost of litigation if it had agreed to Mr. Trenchard's request for information regarding the replacement of windows and doors early on. Instead, the parties incurred the expense of preparation and four days of hearing before reaching a settlement agreement, under which Westsea ultimately agreed to provide leaseholders with a copy of an engineering report.[72]

44. Westsea also did not exercise reasonable or prudent discretion when it spent resources prematurely pursuing a decision on whether it could charge legal fees as Operating Expenses. In the words of the Court of Appeal for British Columbia, "It was wrong for Westsea to have urged the court to decide an issue prematurely, resulting in it incurring additional legal expenses here and in the court below."[73]

45. Lastly, Westsea did not exercise reasonable or prudent discretion when it incurred legal fees in the Trenchard Litigation more generally. While it was not unreasonable for Westsea to defend itself against Mr. Trenchard's NOCC or appeal, its total legal fees go beyond what was reasonable and prudent. Westsea spent more than $1.3M on legal fees in the course of four years, in response to the Trenchard Petition and Trenchard Notice of Civil Claim, both of which were brought by the same self-represented litigant. Westsea itself describes the expenses as "considerable".[74] The respondents submit that Westsea was only willing to incur these significant costs because it relied on the leaseholders to ultimately pay them. Otherwise, it would have exercised more prudent and reasonable discretion.

46. It is possible for a lessor to ultimately succeed in Court, yet to have failed to exercise reasonable and prudent discretion in the course of that same litigation. It should be noted that, in

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[71] *ATCO* at para. 35.
[72] Trache #1, Ex. E at 54.
[73] *Trenchard BCCA 2017* at para. 7.
[74] Petitioner's Written Submissions, Part 1 at para. 68.

such circumstances, the lessor is not left without any possibility to recoup their costs. It is still open to them to seek costs directly against an opposing party pursuant to Rule 14-1 of the *Supreme Court Civil Rules*, like any other litigant.

47. Costs directly chargeable to one or more leaseholders expressly fall outside the definition of Operating Expenses.[75]

iv. Unconscionability and public policy

48. Having resolved the issue as a simple matter of contract interpretation, Milman J found it "unnecessary" to consider whether a different interpretation would have been unconscionable or contrary to public policy.[76]

49. Similarly, the dispute between the petitioner and respondent can be resolved by applying the decision in *Gray* to the facts at hand, and without further resorting to other principles of interpretation.

50. In the event that this Court finds it is helpful to resort to such principles, they only further buttress the respondents' interpretation.

51. The interpretive presumptions that emerge from the organizing principle of good faith support the respondents' interpretation of the Lease. Good faith considerations may assist courts in determining the meaning of contractual provisions.[77] For example, parties are generally assumed to have intended a minimum standard of conduct. [78] They are also assumed not to have intended unreasonable results. The more unreasonable a result, the less likely the parties could have intended it.[79]

52. Westsea's interpretation of the lease would lead to commercially unreasonable results which would be unconscionable and contrary to public policy. In this interpretation, the lessor could benefit from its own wrongs by charging leaseholders for all of its legal costs whenever a

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[75] *Gray* at para. 125; Slater #1 at 28. See also Article 8.02 which arguably allows the landlord to seek indemnity from a specific leaseholder or leaseholders for "costs, damages and expenses suffered or incurred" if the Lessee fails to perform any covenant or condition of the Lease.
[76] *Gray* at para. 116, emphasis in original.
[77] *Bhasin v. Hrynew*, 2014 SCC 71 at paras. 45, 63 – 65, 73, 93 [*Bhasin*].
[78] *Bhasin* at para. 45.
[79] *Bhasin* at para. 45.

leaseholder makes a claim that the lessor has breached the contract. It is highly unlikely the parties would have intended Article 7.01 to carry such an unreasonable meaning.

53. This bring into consideration public policy reasons to reject Westsea's interpretation of the contract. Westsea's interpretation would have the effect of discouraging leaseholders from pursuing their contractual rights in court because they would be requried to pay Westsea's legal fees, even if they successfully showed the lessor breached the Lease. Further, it would force leaseholders who are not party to any litigation to pay for the lessor's legal fees, regardless of the merit or outcome of the litigation. As Justice Brown stated in *Uber Technologies*:

> A provision that penalizes or prohibits one party from enforcing the terms of their agreement directly undermines the administration of justice.
>
> ...
>
> A contract that denies one party the right to enforce its terms undermines both the rule of law and commercial certainty. That such an agreement is contrary to public policy is not a manifestation of judicial idiosyncrasies, but rather an instance of the self-evident proposition that there is no value in a contract that cannot be enforced.[80]

54. Westsea's interpretation would result in denying access to justice to leaseholders who have legitimate interests in ensuring Westsea complies with the obligations to a Lease. Such an interpreation should be avoided, and if accepted, should lead to the provision being unenforceable or contrary to public policy.

55. Westsea submits that the respondents' interpretation of the Lease would lead to "an avalanche of unfounded, meritless claims on the expectation that the signficiant costs of defending litigation, and interpreting and enforcing the Lease would not be chargeable as an Operating Expense"[81]

56. This is a significant overstatement. It presumes without any support that potential claims by leaseholders will be "unfounded" and "meritless." It ignores the reality that other barriers to litigation exist, including the fact that any leaseholder who brings a claim for enforcing the Lease would have to contribute time and money to their own case, and risk costs. Lastly, it ignores the

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[80] *Uber Technologies Inc. v. Heller*, 2020 SCC 16, paras. 110, 112

[81] Petitioner's Written Submissions, Part 3 at para. 95.

fact that, in the event a claim truly discloses no reasonable cause of action or is actually unnecessary, scandalous, frivolous, vexatious, or an abuse of process, the *Supreme Court Civil Rules* provide mechanisms for striking that claim.

B. Relief from forfeiture

1. If the respondents are incorrect in their analysis above, then they seek relief from forfeiture and rely on s. 24 of the *Law and Equity Act*. The law was summarized by the Court of Appeal in *Airside Event Spaces Inc. v. Langley (Township)*, 2021 BCCA 306.[82]

2. Proportionality is a significant factor, and in this case the loss suffered by the respondents would be disproportionately large (the loss of their homes) compared to the minimal amount of arrears (which only some respondents owe).

3. The Court can grant relief with the condition that the respondents who do owe arrears arising from the Trenchard Litigation are ordered to pay those arrears with interest.

C. LPA Review

4. Finally, if the respondents are incorrect in the interpretation of the Lease, then this Court should find that review under s. 70 of the *Legal Professions Act*, S.B.C. 1998, c. 9 is available as leaseholders would then be "a person who has agreed to indemnify" Westsea for its legal costs. That way, there remains a mechanism to ensure that Westsea's litigation fees in the Trenchard Litigation were reasonable. As this Court has said: "a lawyer's bill is always subject to independent review to ensure that the public is protected against unreasonable legal fees and disbursements".[83]

PART V. ORDERS SOUGHT

1. Westsea's petition ought to be dismissed.

2. The respondents seek leave to make written submissions on costs after the determination of the petition.

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[82] *Airside Event Spaces Inc. v. Langley (Township)*, 2021 BCCA 306, paras. 21-22

[83] *Travelers Guarantee Company of Canada v. Ryan*, 2012 BCSC 43, para. 13. It should be noted that there exists a pending LPA review brought by one of the respondents for non-Trenchard Litigation legal fees, which is currently stayed pending the determination of this hearing: *Singleton Urquhart Reynolds Vogel LLP v Rotering*, 2025 BCSC 198.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: 05 Nov 2025

Signature of lawyer for the respondents,
Andrew Scott Taylor, Edith Wood, Gerald John Rotering, Helen Elisabeth Verwey, Jacalyn Gail Hays, Martine Goddard, Patricia Anne Smith, Reiner Joachin Piehl, Doreen Greeta Piehl and Su-Lin Shum
David W. Wu and Emily Chan

List of Authorities

Tab	Description
Cases	
1	*Airside Event Spaces Inc. v. Langley (Township)*, 2021 BCCA 306
2	*ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, 2015 SCC 45
3	*Bhasin v. Hrynew,* 2014 SCC 71
4	*Gray v. 1534 Harwood Street (St. Pierre) Ltd.*, 2025 BCSC 1758
5	*Hugh Alexander Trenchard v. Westsea Construction Ltd.*, 2018 CanLII 73618
6	*Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37
7	*R. v. Sullivan*, 2022 SCC 19
8	*Singleton Urquhart Reynolds Vogel LLP v. Rotering*, 2025 BCSC 198
9	*Travelers Guarantee Company of Canada v. Ryan*, 2012 BCSC 43
10	*Trenchard v. Westsea Construction Ltd.*, 2016 BCSC 1752
11	*Trenchard v. Westsea Construction Ltd.*, 2017 BCCA 352
12	*Trenchard v. Westsea Construction Ltd.*, 2019 BCSC 1675
13	*Trenchard v. Westsea Construction Ltd.*, 2020 BCCA 152
14	*Uber Technologies Inc. v. Heller*, 2020 SCC 16
Statutory Provisions	
15	*Commercial Tenancy Act,* RSBC 1996, c. 57
16	*Residential Tenancy Act*, SBC 2002, c. 78, s. 4(i)