

WESTSEA CONSTRUCTION LTD.

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December 10, 2020

Gerald Rotering
807 – 647 Michigan Street
Victoria, BC V8V 1S9

Dear Gerald:

Re: Suite 807 – 647 Michigan Street, Victoria, B.C. (the "Suite")

We write as the owner and manager of the Orchard House apartment building ("**Orchard House**") in which you are the leaseholder of the above Suite. We received your letters dated December 1 and 3, 2020 about various issues related to 2019 operating costs at Orchard House.

Westsea fulfills its contractual obligations under the Orchard House Lease (the "**Lease**"), including exercising its discretion to incur operating expenses prudently and reasonably. This includes repairs and maintenance as well as legal costs and charges.

There is no obligation under the Lease for Westsea to do any more than to estimate operating expenses for the ensuing year and to inform leaseholders about actual operating expenses for the previous year. There is no provision in the Lease for the Orchard House leaseholders to approve of, question the costs of and/or to obtain detailed disclosure about any specific category of operating expenses

Westsea sends copies of the audited statements to all leaseholders and, on a regular basis, also circulates letters that inform leaseholders about budgets, actual operating expenses and ongoing developments at Orchard House. This is a cost effective way to update Orchard House leaseholders about matters relating to the building.

Regarding your questions about legal charges, we cannot, for reasons relating to privilege and to protect the privacy of leaseholders and residents at Orchard House, disclose any particulars about the legal charges described in the Schedule of Operating Costs.

However, some of the litigation involving Orchard House however has been the subject of Court proceedings and the judgments have been published. As you are aware, Mr. Trenchard's action against Westsea proceeded to trial in June, 2019. The citation for the trial decision is **Trenchard v. Westsea Construction Ltd., 2019 BCSC 1675** and can be accessed at www.canlii.org.

Mr. Trenchard sought to alter the obligations under the Orchard House Lease by arguing that major repairs to the building should be payable by Westsea, not by the leaseholders. This is contrary to the Lease and Westsea defended these allegations at trial. The presiding Judge, Madam Justice Douglas, dismissed Mr. Trenchard's action.

In the event you have not reviewed the Reasons we suggest that you do so. We refer you to paragraph 108 of the decision which states:

"[108] I am not persuaded by the plaintiff's argument the Lease obliges neither leaseholders nor the lessor to undertake the repair or replacement of deteriorated Building components damaged due to reasonable wear and tear. I conclude such an interpretation would lead to an absurd result which the parties could not reasonably have contemplated when they entered into the Lease. If neither party was obliged to undertake the Project and this work was not completed, the evidence confirms the Building would have fallen into disrepair and may not have survived the term of the Lease."

The Trial Judge's conclusions are summarized of 164 of the Reasons which state:

"[164] My conclusions are summarised as follows:

- a) The Lease, construed as a whole, is clear and unambiguous;
- b) The Project was necessary to address a water ingress problem at the Building occasioned by reasonable wear and tear;
- c) The Project outer wall repairs could not have been completed without replacing the existing windows, sliding doors, and fans;
- d) Westsea was required to undertake the Project pursuant to its lessor covenants in Article 5.03 of the Lease;
- e) Westsea was entitled to charge the plaintiff his proportionate share of the Project as operating expenses, as defined in Article 7.01 of the Lease;
- f) Westsea did not breach Article 7.02 of the Lease;
- g) The Project did not result in betterment;"

Unfortunately, Mr. Trenchard decided to appeal the dismissal of his claim at trial. In May, 2020 the British Columbia Court of Appeal upheld the decision of the Trial Judge that the lease is clear and unambiguous and that the leaseholders are obligated to pay for repairs at Orchard House as operating expenses.

In paragraph 72 the Court held that:

". . . the judge accepted the evidence that the windows, sliding doors and exhaust fans would require further replacement in another 25-35 years. As this will be well before the end of the term of the Lease, the judge commented that the only parties who will benefit from the Project are the leaseholders."

The Court of Appeal at paragraph 26 adopted the finding from the trial decision that Westsea was obligated to keep the outer walls in good repair and condition and concluded on the evidence that "there was a water ingress problem at the Building in 2016 which would have worsened if not addressed, thereby causing the building to fall into a serious state of disrepair": para 92.

The citation for the Court of Appeal Decision is *Trenchard v. Westsea Construction Ltd.*, 2020 BCCA 152 and can be accessed at www.canlii.org.

Issues relating to legal charges and costs Westsea incurred in defending Mr. Trenchard's litigation continue to be before the Court. Given the disposition of Mr. Trenchard's claim at trial and on appeal, in view of the Court's finding that the Orchard House Lease is "clear and unambiguous" Westsea is confident that the Court will also rule that legal costs, charges and expenses incurred in defending the Orchard House Lease for the benefit of Westsea and for all of the leaseholders, are chargeable as operating expenses under the Lease.

Westsea will continue to protect its interests and those of all of the Orchard House leaseholders. If unfounded allegations continue to be advanced that Westsea is required to defend, then legal costs, charges and expenses will continue to be incurred.

Regarding yearly maintenance fees, such amounts are based on the previous year's operating expenses at Orchard House and are estimated in order to meet the projected administration, maintenance and repair costs of the building in the following year.

Orchard House is an aging residential complex and will require, over time, remediation of significant building components. It should be expected that repairs to various features of the building, for example replacement of windows and sliding doors, will be commonplace as the property continues to age. Special assessments to pay for required repairs will, from time to time, be necessary.

Unless this is done, building systems will deteriorate and Orchard House's condition could decline to the point that the building could become uninhabitable, as it would have become without a functioning exterior building envelope.

Westsea intends to fulfill its obligations under the Lease. As our consultants and professional advisors recommend maintenance and repair projects, they will be undertaken and the costs of those projects will be charged to the Orchard House leaseholders as operating expenses.

Yours very truly,

WESTSEA CONSTRUCTION LTD.

Per:

