

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0899148 B.C. Ltd. v. Ching*,
2025 BCSC 1694

Date: 20250905
Docket: S253866
Registry: New Westminster

Between:

0899148 B.C. Ltd.
The Owners, Strata Plan No. EPS5979

Petitioners

And

Anson Hanshen Ching

Respondent

- and -

Docket: S257903
Registry: New Westminster

Between:

Anson Hanshen Ching

Petitioner

And

0899148 B.C. Ltd.

Respondent

Before: The Honourable Justice M. Taylor

Reasons for Judgment

Counsel for 0899148 B.C. Ltd. and The
Owners, Strata Plan No. EPS5979:

R.S. Atwal

The Respondent/Petitioner, appearing in
person:

A.H. Ching

Place and Date of Hearing:

New Westminster, B.C.
June 20, 2025

Place and Date of Judgment:

New Westminster, B.C.
September 5, 2025

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I. INTRODUCTION

[1] This chambers matter involved cross petitions relating to a strata property located at 705 and 707 East 13th Avenue and at 2888 Fraser Street, Vancouver, British Columbia (the “Strata Property”). The Strata Property is comprised of three strata lots (the “Strata Lots”).

[2] In the petition commenced by 0899148 B.C. Ltd. (“089”) and the Owners, Strata Plan No. EPS5979 (the “Strata Corporation”) (collectively the “Corporate Parties”), the orders sought include:

- that certain repairs and maintenance recommended to the Strata Property by a professional home inspector are required;
- that the costs of these repairs be apportioned and paid as a special levy by the owners of the three Strata Lots and into the future;
- that certain other prior expenditures incurred by the Corporate Parties be apportioned and paid by the Strata Lot owners; and
- that an injunction be granted requiring the respondent Mr. Anson Hanshen Ching, an owner of one of the Strata Lots, not to interfere with the repairs (the “Corporate Petition”).

[3] The orders sought in the Corporate Petition are opposed by the respondent Mr. Ching.

[4] During the course of the hearing, counsel for the Corporate Parties advised that his clients were abandoning the request for an injunction against Mr. Ching but continued to seek the other remedies in the Corporate Petition.

[5] In the petition commenced by Mr. Ching against 089 (the “Unit Owner Petition”), he seeks a variety of orders (described more fully below), including that:

- the Strata Corporation bring itself into compliance with its duties under the *Strata Property Act*, S.B.C. 1998, c. 43 [Act];
- the Strata Corporation cooperate with regard to producing certain documents to Mr. Ching;
- the Strata Corporation provide a key to Mr. Ching within 30 days to enable him to access the common utility room;
- the Strata Corporation cooperate with respect to remedying certain repairs and defects on the Strata Property;
- the repairs recommended to the Strata Property by a professional home inspector are repairs relating to building defects and not maintenance costs; and
- the Strata Corporation hire a property management company, or alternatively an administrator, with costs to be shared by all the Strata Unit holders.

[6] Mr. Ching did not add the Strata Corporation as a respondent to the Unit Owner Petition. This appears to have been an oversight, given the fact that Mr. Ching seeks many orders in the Unit Owner Petition directly against the Strata Corporation. In my view it is appropriate under the circumstances, for at least six reasons, to grant an order amending the Unit Owner Petition to add the Strata Corporation as a respondent.

[7] First, Mr. Ching is self-represented and may not have understood the technical need to add the Strata Corporation as a respondent in the Unit Owner Petition in addition to seeking remedies against the Strata Corporation in Part 1: Orders Sought of that document. An important likely explanation for this in the context of these proceedings, as will become apparent in the reasons that follow, is that 089 has consistently held itself out as legally acting on behalf of (and often in substitution for) the Strata Corporation, and legal counsel for 089 made it clear at the hearing that he was acting for both 089 and the Strata Corporation. The blurring of

the lines between the legal status of 089 and the Strata Corporation has clearly created confusion on the part of Mr. Ching as to who he needed to be naming as a respondent.

[8] Second, the Strata Corporation is a named petitioner in the Corporate Petition and, on June 18, 2025, Associate Judge Hughes ordered the Corporate Petition and the Unit Holder Petition to be heard together. Given this order requiring a joint hearing, there was never any doubt during the course of the hearing that the named parties implicated in both petitions were 089, the Strata Corporation and Mr. Ching.

[9] Third, there is no prejudice to the Strata Corporation that arises from being named a party to the Unit Owner Petition. The Strata Corporation was represented by legal counsel throughout the hearing with respect to both petitions and was given a full opportunity to (and did) make submissions on the merits on both petitions. The Strata Corporation was also fully on notice in advance of the hearing with respect to the remedies sought against it in the Unit Owner Petition by Mr. Ching. Moreover, most of the remedies sought by Mr. Ching against the Strata Corporation in the Unit Owner Petition were also remedies that Mr. Ching made clear that he would be seeking against the Strata Corporation in his response to the Corporate Petition (filed July 15, 2024, almost a year before this hearing), and ultimately were remedies sought in Part 1 of the Unit Owner Petition.

[10] Mr. Ching had also previously filed a Notice of Application on January 10, 2025 naming both Corporate Parties as respondents and seeking essentially the same relief as he now seeks in the Unit Owner Petition. The Corporate Parties objected to the Notice of Application at the time on the basis that Mr. Ching should instead have proceeded by cross-petition. In response to that objection Mr. Ching abandoned the Notice of Application and filed the Unit Owner Petition instead. Mr. Ching also filed an application on June 16, 2025 to have the Corporate Petition and Unit Owner Petition heard together on the same day and the Corporate Parties took no position on that application. Thus the Corporate Parties have been fully on notice

for months with respect to the remedies sought by Mr. Ching in the Unit Owner Petition.

[11] Fourth, the Corporate Parties did not object to the Unit Holder Petition at the hearing on the basis that the Strata Corporation had not been named a party. To the contrary, in the 089 response to the Unit Owner Petition, 089 purported to respond on the merits on behalf of both 089 and the Strata Corporation (for example, in paragraph 21 of the response, 089 refers to the “Petitioner Respondents” and in paragraphs 12-13 and 22-25, 089 purports to respond on behalf of the Strata Corporation alone, as a party distinct from 089). In my view this was an admission on the part of counsel for the Strata Corporation that the Strata Corporation understood that it was indeed a respondent on the merits to the Unit Owner Petition. As noted above, counsel for the Corporate Parties did object to Mr. Ching’s earlier Notice of Application on the basis that it should have been filed as a “cross petition”, apparently taking the position that Mr. Ching should have named both 089 and the Strata Corporation as responding parties. That earlier position taken by counsel for the Corporate Parties is fully consistent with my conclusion that the Strata Corporation should properly be added as a party.

[12] Fifth, the legal and factual issues in the Corporate Petition and the Unit Owner Petition are legally and factually intertwined. It would be artificial in the extreme to treat the Strata Corporation as a key party to the Corporate Petition and, at the same time, as a stranger to the Unit Owner Petition. The Strata Corporation is a central party in both petitions and, in my view, it is appropriate and just to consider all the issues and remedies raised in both petitions in relation to both 089 and the Strata Corporation.

[13] Sixth, as will be apparent from these reasons, there is a pressing need for a ruling and remedies in this case. It does not appear to me to be in the interests of justice to delay matters further by staying this decision to hear a formal application by Mr. Ching to add the Strata Corporation as a party (which I would certainly grant in any event given the circumstances). For the purposes of both justice and

efficiency, I have therefore exercised my discretion to add the Strata Corporation as a respondent to the Unit Owner Petition.

[14] Mr. Ching had also previously commenced a British Columbia Civil Resolution Tribunal (“CRT”) application but it was agreed between the parties that the CRT application would be postponed pending a ruling on the two petitions in this proceeding.

II. BACKGROUND

A. The Parties

[15] 089, a company incorporated under the laws of British Columbia, was the original developer of the Strata Property. 089 purchased the parent parcel on the Strata Property and developed the current three Strata Lots as a triplex.

[16] A strata plan was filed in the New Westminster Land Title Office on February 20, 2020 (the “Strata Plan”), which confirms that the Strata Property consists of three residential strata lots (“Strata Lot 1”, “Strata Lot 2” and “Strata Lot 3”) together with an interest in common property in proportion to the unit entitlement of each Strata Lot.

[17] Mr. Perdip Singh Moore, as he admitted in an affidavit sworn in this proceeding, is the sole shareholder and “operating mind” of 089. Mr. Moore is also the main point of contact for PD Moore Homes Inc. (“PD Moore Homes”), a commercial builder/developer which apparently was also involved in the original development of the Strata Property and subsequently, although the extent of that involvement was unclear on the evidence.

[18] In this decision, I will refer to 089 as the “owner developer” because, pursuant to the statutory definition under the *Act*, it was 089 that was registered in the land title office as the owner of the freehold estate in the land shown on the Strata Plan on the date that application was made to the registrar for deposit of the Strata Plan (February 20, 2020). This was admitted by Mr. Moore in his affidavit sworn in this proceeding.

[19] Mr. Ching purchased Strata Lot 2 from 089 on March 6, 2020. Mr. Ching currently lives in Strata Lot 2 with his partner Courtney Forth.

[20] 089 has at all material times been the registered owner of Strata Lots 1 and 3. Since 2020, 089 has periodically rented Strata Lot 1 and Strata Lot 3 to tenants.

[21] The Strata Corporation's Form V, Schedule of Unit Entitlement was registered on February 19, 2020 (with Mr. Moore signing as "Owner Developer") as follows:

Strata Lot No.	Habitable Area in m2	Unit Entitlement	% of Total Unit Entitlement
1	48.7	49	19.3
2	105.9	106	41.7
3	99	99	39.0
		Total: 254	

[22] There is a common utility room on the Strata Property (the "Common Utility Room") which is located in a crawl space and noted as common property on the Strata Plan. It contains water heaters and a water shut off valve for all three Strata Lot units. Access is through the yard of Strata Lot 3 and by a small door with a lock.

[23] Since 2020, Mr. Moore in his capacity as representative for both 089 and PD Moore Homes has acted as the main point of contact at the Strata Property with regards to addressing maintenance and repair matters and also issues pertaining to the New Home Warranty Insurance ("New Home Warranty") and 2-5-10 Common Property Insurance ("Common Property Warranty") covered by WBI Home Warranty Ltd. ("WBI").

[24] The Strata Property was insured by Schill Insurance Brokers Ltd. ("Schill Insurance") from April 2020 to April 2024. Mr. Moore has acted as the main point of contact with regard to Strata Property insurance.

B. Non-Compliance of the Strata Corporation with the Act

[25] By virtue of s. 2(1) of the *Act*, a Strata Corporation was automatically created once the Strata Plan was deposited at the Land Title Office on February 20, 2020. As the owners of the Strata Lots in the Strata Plan, 089 and later Mr. Ching became members of the Strata Corporation: *Act*, s. 2(1)(b). 089, as the “owner developer” became responsible for exercising the powers and duties of the strata council until the first annual general meeting, pursuant to s. 5(1) of the *Act*.

[26] However, since the Strata Corporation was created in 2020, the Corporate Parties have been non-compliant with the *Act* in essentially all material respects. Some examples of this non-compliance include that:

- 089, as the "owner developer" of the Strata Property, failed to hold a first annual general meeting during the six-week period that begins nine months after the date of the first conveyance of a Strata Lot to a purchaser, as required under s. 16(1)(b) of the *Act*. Since Mr. Ching purchased Strata Lot 2 from 089 on March 6, 2020, this means that 089 should have held a first annual general meeting no later than early in 2021 – more than four years ago;
- By failing to hold a first annual general meeting, 089 clearly exceeded its powers under the *Act*. Section 5(1) of the *Act* states that the owner developer must exercise the powers and perform the duties of a council from “the time the strata corporation is established until a council is elected at the strata corporation's first annual general meeting” and s. 5(2) states that, during that time frame, the owner developer “need not comply with bylaw requirements respecting the constitution of the council or the holding or conduct of council meetings”. However, the interim powers of the owner developer under s. 5 are circumscribed by s. 16 which states that the owner developer “must” hold the first annual general meeting within the requisite time frame. Given the mandatory nature of s. 16, s. 5 in my view cannot be used to justify an owner

- developer's continued unilateral and indefinite exercise of the powers of a strata council beyond the legislatively stipulated time frame;
- As of the date of this petition, 089 has still has not held a first annual general meeting and the Strata Corporation has not held an annual general meeting of any kind as required under s. 40 of the *Act*. There was also no evidence before me on the application that all the Stata Corporation's eligible voters had at any time since 2021 waived the right to an annual general meeting, as required under s. 41 of the *Act*;
 - 089 failed, pursuant to s. 20 of the *Act*, to place before the first annual general meeting and give the Strata Corporation copies of all the documents required therein;
 - There was no evidence before me that 089 has established a contingency reserve fund as required under s. 12 of the *Act*;
 - The Strata Corporation has never elected or appointed a strata council as required under ss. 20(1), 25 and 26 of the *Act*. There was also no evidence before me that a strata council has ever exercised the powers and performed the duties of the Strata Corporation, as required under s. 26 of the *Act*;
 - The Strata Corporation has failed to make available to Mr. Ching on request the books and records referred to in s. 35 of the *Act*;
 - There has never been a budget passed by the Strata Corporation at an annual general meeting as required under s. 103 of the *Act*;
 - The Strata Corporation has failed to establish an operating fund for common expenses and failed to establish a contingency reserve fund as required under s. 92 of the *Act*; and
 - The special levy sought to be levied by the Strata Corporation on the Corporate Petition was not approved by the owners of the Strata Corporation

by way of a resolution passed by a $\frac{3}{4}$ vote at an annual general meeting or special general meeting as required under s. 108 of the *Act*.

[27] These are merely some notable examples of non-compliance with the *Act* by the Corporate Parties but there are many others not mentioned above.

[28] The reason for the almost universal non-compliance by the Corporate Parties with the *Act* is that 089 and its operating mind Mr. Moore have consistently taken the position that, as the owner of two of the three Strata Units, 089 is legally entitled to operate unilaterally on behalf of the Strata Corporation without calling a general meeting, acting through a strata council or consulting with the minority owner Mr. Ching. Ms. Forth deposed in her affidavit that Mr. Moore stated this viewpoint to her over the phone on January 9, 2024. Later, in an email to Schill Insurance dated March 8, 2024 concerning proposed changes to the insurance quote requested by Mr. Ching, Mr. Moore reiterated this position in writing, stating:

Can you please clarify why you need the minority owner to approve these changes? I spoke to my lawyer and it's the majority owner who decides on what is approved.

[29] There are numerous issues with Mr. Moore's position in this regard. First, while 089 would have the bare majority vote to pass some resolutions at a strata council meeting (if one had ever been held), there are many resolutions that require a $\frac{3}{4}$ majority under the *Act* or even a unanimous vote. Thus, the majority does not always "decide on what is approved" by the strata council under the *Act*, as alleged by Mr. Moore and his lawyer.

[30] Second, one owner having a majority of the voting shares does not exempt a Strata Corporation from holding a vote, nor from holding annual or special general meetings more broadly. The meetings, amongst many other things, ensure that a minority owner is provided with full notice and information of decisions and that there is an operating and functional Strata Corporation democracy.

[31] Third, the strata council remains the body through which the Strata Corporation acts. There are numerous provisions and protections in the *Act* that

govern how the strata council may operate and, even if 089 has the majority required to act, it must abide by these procedures.

[32] The Corporate Parties have also taken the position in the Corporate Petition that the Strata Corporation is a “non-conforming strata”, which they allege relieves the Strata Corporation of any obligation to comply with the *Act*. Legal counsel for the Corporate Parties confirmed this position in an email to Mr. Ching dated June 14, 2024, in which he stated:

... your contract of sale confirms that this property is being run as a non-conforming strata and is not run under compliance with the Strata Property Act. Further, it confirms that the parties do not rely on a strata council to make any changes. I have not come across any Strata bylaws or other Strata documents. If you have those, please forward them.

[33] I will address the legal flaws in this “non-conforming strata” argument more fully below.

C. Interactions between Mr. Ching and the Corporate Parties between 2020 and 2024

[34] From May 2020 to January 2024, despite the non-compliance with the *Act*, there were apparently no major disputes between Mr. Ching and the Corporate Parties relating to the Strata Property and Mr. Ching and Mr. Moore interacted together relatively collaboratively.

[35] For example, Mr. Ching deposed that property maintenance costs were shared between 089 and Mr. Ching based on Strata Unit entitlement without issue from May 2020 to January 2024. On occasions where property maintenance issues were raised by Mr. Ching and Ms. Forth, Ms. Forth hired professionals to address them and Mr. Moore provided 089’s share of the payment. Strata Property insurance was also agreed upon and paid by 089 and Mr. Ching as per recommended strata coverages without issue until April 2024.

[36] Although it is perhaps arguable that Mr. Ching should have been more proactive between 2020 and 2024 in asserting that the Strata Corporation must comply with the *Act*, it is also understandable that he did not do so given the small

number of units on the Strata Property, the lack of formality and the fact that matters at the Strata Property were being managed without major conflict. Nonetheless, the fact is that the *Act* does not require an objection from an owner of a strata unit to require the owner developer and ultimately the Strata Corporation to bring themselves into compliance with the *Act*; they must do so as a matter of statutory obligation even if there is no objection from a unit holder.

[37] Despite the early cooperative relationship, a conflict developed between the parties when Mr. Moore discovered in 2024 that Mr. Ching had provided evidence at a Residential Tenancy Branch (“RTB”) hearing on a wrongful eviction claim made by one of 089’s former tenants. The former tenants living in Strata Lot 1 were apparently evicted by 089 on the basis that Mr. Moore’s son would purportedly be moving into that basement unit. Mr. Ching provided evidence at the RTB hearing that Mr. Moore’s son had not moved in and, instead, a short-term rental was being operated by someone who claimed to be his son but who was later identified by Mr. Moore as his son’s cousin. Ultimately, the RTB found that the previous tenants were entitled to a monetary order for compensation as the landlord had failed to accomplish the stated purpose on the notice to end tenancy.

[38] Mr. Ching’s participation in the RTB process apparently upset Mr. Moore. Ms. Forth deposed that, following the RTB decision, Mr. Moore called Ms. Forth on January 9, 2024 and threatened retribution. After that phone call, according to the affidavits of Mr. Ching and Ms. Forth, Mr. Moore started acting in an obstructive and difficult manner, including changing the lock on the Common Utility Room, not being responsive to repair issues, cancelling the Strata Property insurance with Schill Insurance (with the result that the Strata Property was uninsured for a period of close to a month), obstructing efforts to obtain new insurance for the Strata Property and ultimately commencing the Corporate Petition against Mr. Ching without prior notice.

III. ANALYSIS

[39] I will first address the merits of the Corporate Petition and then proceed to the Unit Owner Petition.

A. The Corporate Petition

[40] In the Corporate Petition, the Corporate Parties seek:

1. A declaration that the repairs recommended by a professional home inspector, Royal Building Inspection & Consulting Services (“Royal”), including repairs of exterior components and mechanical room as specified in the report dated January 22, 2024 (the “Building Rehabilitation”) are required repairs forming the responsibility of the Strata Corporation lot owners.
2. An order approving a special levy in the amount of \$150,000 (the “Special Levy”) to finance repairs including the Building Rehabilitation, potential permit fees, professional costs, warranty, contractors, legal costs, contingency, applicable taxes and related expenditures (the “Expenditures”), due and payable within 30 days from the date that the Order is granted, upon the owners of the three strata lots.
3. An order that 41.7% of the Expenditures be apportioned to the respondent, Anson Hanshen Ching, and 58.3% be apportioned to 089 (the “Cost Sharing Agreement”).
4. An order directed and authorizing the Strata Corporation to collect the Special Levy, to conduct the Building Rehabilitation and to pay for the Expenditures out of the Special Levy monies, all of which may be conducted in a reasonable manner and a $\frac{3}{4}$ vote of eligible voters at a general meeting for these purposes is not required.
5. A declaration that the Cost Sharing arrangement shall continue in the future purposes.
6. An order that Mr. Ching pay 41.7% of the Previous Expenditures.
7. An injunction prohibiting the respondent, Anson Ching from interfering with Building Rehabilitation.

1. Preliminary Standing Issue

[41] Although the issue was not raised at the hearing by Mr. Ching, in my view there was a live question as to whether either of the Corporate Parties had standing to commence and proceed with the Corporate Petition.

[42] With respect to the standing of 089, the *Act* does not provide a mechanism for a strata unit owner to sue another strata unit owner who owns 50% or less of the votes on strata council directly. Specifically:

- Sections 170 and 171 of the *Act* are clear that the Strata Corporation may sue an owner;
- Sections 164 and 165 of the *Act* state that owners can apply individually for orders as against the Strata Corporation or persons who hold more than 50% of the votes on strata council but does not authorize suits against other strata unit holders;
- The courts have made it clear that a strata unit owner does not have statutory authority to bring a lawsuit in a derivative capacity on behalf of the Strata Corporation against another strata unit holder: *Extra Gift Exchange Inc., et al v. Ernest & Twins Ventures (PP) Ltd., et al.*, 2007 BCSC 426 at para. 64;
- Section 165(c) has been interpreted as allowing for a court to issue a special levy: *Santos v. The Owners, Strata Plan LMS 1509*, 2016 BCSC 1775 at para. 33. However, this section only authorizes suits against the strata corporation for its lack of enforcement of the strata's bylaws and rules; it does not extend to the right to sue another individual owner directly for breaches of the *Act* or the strata's bylaws or rules: *Buchner v. Longenecker*, 2025 BCSC 804 at para. 77; *Cheikes v. BM Clubhouse 40 Ltd.*, 2023 BCSC 14 at para. 23. This is because “the strata council, not individual owners, exercises the powers and duties of the strata, including enforcing the strata corporation’s bylaws”: *Buchner* at para. 77; and
- For example, the courts may make a “Tadeson Order” under s. 165 to fund common property repairs where the ownership has failed to pass a $\frac{3}{4}$ vote resolution: *Tadeson v. Strata Plan NW 2644*, 1999 CanLII 6999 (BCSC). However, in all the “Tadeson Order” cases involving owners seeking repairs to be done, the suit is brought by owners against the strata corporation and not against the other individual owners who voted against the resolution. This is because it is the strata corporation that has the duty to repair and maintain common property under s. 72 of the *Act*, and not individual unit holders.

[43] Therefore, 089 is not a proper party to the Corporate Petition and lacks standing as a co-petitioner with the Strata Corporation against Mr. Ching. While 089 could in theory have sought a Tadeson Order as against the Strata Corporation, it would have to have named the Strata Corporation as a respondent on the petition (which it did not) and not as a co-petitioner.

[44] With respect to the standing of the Strata Corporation, s. 171(1) of the *Act* states that it may sue as a representative of all owners, except any who are being sued, about any matter affecting the Strata Corporation. However, s. 171(2) further states that, before a strata corporation sues under this section, the suit must be authorized by a resolution passed by a three-quarters vote at an annual or special general meeting. Section 172(1) of the *Act* also authorizes the strata corporation to sue on behalf of one or more owners about matters affecting only their strata lots but 172(1)(b) makes it clear that this suit must be authorized by a three-quarters vote at an annual or special general meeting.

[45] There was no evidence on the petition that the Strata Corporation has ever held an annual or special general meeting, nor was there evidence of a resolution authorizing the commencement of this Corporate Petition. Thus, the Strata Corporation was not duly authorized under the *Act* to commence the Corporate Petition.

[46] However, this is not the end of the analysis. Section 173.1 of the *Act* states that a failure of a strata corporation to obtain an authorization under s. 171 or 172 does not make the suit void. Instead, as explained by the Court of Appeal in *The Owners, Strata Plan LMS 2940 v. Squamish Whistler Express and Freight*, 2010 BCCA 74, a failure to obtain authorization may make a suit voidable:

[36] ... The trial judge was also correct in finding that, regardless of its retroactive effect in this case, s. 173.1 does not remove the statutory impediment presented by ss. 171 and 172. Although an unauthorized action commenced by a strata corporation action is no longer void by operation of s. 173.1, it must still obtain a special resolution from the requisite number of owners before it is authorized to bring an action on their behalf. If the intention of the Legislature was to make a special resolution in these circumstances optional, or to remove the consequences of a strata

corporation bringing an unauthorized action, then it would have been sufficient to simply repeal ss. 171 and 172 instead of adding s. 173.1

[37] It is clear from the comments of the Attorney General that were made when introducing the s. 173.1 amendment that ss. 171 and 172 have a corporate governance purpose:

The new section will clarify that the requirement for strata corporations to obtain owner approval before commencing a lawsuit is an internal procedural rule for the benefit of the owners

[38] With the implementation of 173.1, a previously unauthorized and void action by a strata corporation is converted to a voidable action. This view is supported by s. 165 of the Act, by which an owner or “interested person” may take steps to ensure that a strata council and its members comply with the mandatory procedures under the Act. Section 165(b) of the Act allows an interested person to seek an order from the Supreme Court directing a strata council to stop contravening the Act and s. 165(c) authorizes the court to make any other order necessary to give effect to an order made under s. 165(b).

[39] The contravention of ss. 171 and 172 could also have consequences for strata council members, notwithstanding the effect of s. 173.1. For example, s. 31 of the Act requires council members, when exercising the powers and performing the duties of the strata corporation, to act honestly and in good faith with a view to the best interests of the strata corporation, and with the care, diligence, and skill of a reasonably prudent person in comparable circumstances. It is not likely that a reasonably prudent person (or strata corporation) would bring an action in contravention of the Act.

[47] Since the Corporate Petition was clearly commenced in contravention of the Act, it is not void *ab initio* but it is voidable. As noted by the Court of Appeal, a contravening petition can be voided under s. 165 of the Act in a circumstance where an owner or “interested person” applies for a court order requiring a strata council and its members to comply with the mandatory procedures under the Act and directing a strata council to stop contravening the Act. And, indeed, this is precisely the circumstance that applies in this case because Mr. Ching in the Unit Owner Petition has sought many orders under s. 165 and other provisions of the Act directing the Strata Corporation to bring itself into compliance with the Act.

[48] Thus, there is a strong argument in my view that the Corporate Petition should be voided on the grounds of non-compliance with the Act, both in relation to s. 171 specifically and with respect to non-compliance with mandatory provisions under the Act generally. In this respect, I note the observation of the Court of Appeal

in *Squamish Whistler Express* above at para. 39 that “[i]t is not likely that a reasonably prudent person (or strata corporation) would bring an action in contravention of the Act.” Unfortunately, this is precisely what the Corporate Parties have done in this proceeding, in addition to engaging in many other actions in relation to the Strata Corporation that “reasonably prudent persons” would not undertake, as outlined more fully below.

[49] Nonetheless, in the event that my conclusion about this is incorrect and to ensure that these reasons are comprehensive, I will next proceed to address the merits of the Corporate Petition on the assumption that the Strata Corporation does in fact have standing to proceed.

2. Merits of the Corporate Petition

[50] In my view the Corporate Petition is without merit and should be dismissed. In explaining my conclusion, I will address each of the deficiencies in the arguments made by the Strata Corporation in turn.

a) The “Non-Conforming Strata” Argument

[51] The principal argument advanced by the Corporate Parties at the hearing was that the Strata Corporation has the legal status of a “non-conforming strata” and therefore that neither the Strata Corporation nor the owner developer, 089, had any obligation to comply with the *Act* with respect to any of their actions.

[52] This argument appears to be based on large part upon the Agreement between Mr. Ching and 089, which contained the following clause under s. 3 of the Terms and Conditions:

The buyer hereby acknowledges, agrees and is aware that the subject property is a Triplex and as a non conforming strata property. The strata Corporation has not been run in compliance with the Strata Property Act and, in particular, there is no strata council, there has been no strata meeting, there is no budget, no strata fees have been collected, there is no contingency fund, and is no engineering or depreciating report of any kind.

[53] The Corporate Parties took the position on the petition that, by virtue of this clause, Mr. Ching had agreed that the Strata Corporation is to be legally considered

a “non conforming strata” and, in that capacity, the Strata Corporation and 089 were legally unencumbered by any past or future obligation to comply with the *Act* in any way.

[54] I do not find this argument to be persuasive for three reasons.

[55] First, legal counsel for the Corporate Parties was unable to direct me to any provision of the *Act*, court decision, or any other legal precedent, that supported the proposition that a “non conforming strata” exists as a separate legal category under the *Act* or otherwise creates any exemptions from, or special privileges under, the *Act*. The proposition advanced by the Corporate Parties appears to be a novel one in British Columbia law.

[56] Approaching this matter as a matter of first principle, I do not accept the proposition that parties to a purchase and sale agreement have the private power or right to fully exempt themselves from, or waive in its entirety, a comprehensive and mandatory statutory scheme such as the *Act*. As noted by the Court of Appeal in *SWS Marketing Inc. v. Zavier*, 2021 BCCA 201 at para. 37:

[t]he *Strata Property Act* provides a comprehensive code for the governance of these communal properties.

[Emphasis added.]

[57] The Court of Appeal in *SWS* also cited *Jiwan Dhillon & Co. Inc. v. Gosal*, 2010 BCCA 324 for the proposition that the requirements under the *Act* are “mandatory”, suggesting that it is not open to contracting parties to opt out:

[17] Strata property ownership presents a distinct mix of legal principles derived from property law and law relating to collective governance. The framework is provided by a statute designed to facilitate management of common issues, providing an appropriate degree of individual autonomy through the device of democratic principles, and borrowing to some degree from concepts found in statutes regulating municipal and corporate governance.

[18] To that end, the *Strata Property Act* and bylaws passed under it, provide a code for governance of strata properties setting out mandatory requirements permitting participation of owners in the governance through election of the strata council, control over the strata corporation’s bylaws, and control over certain management decisions that are considered so important

to the enterprise as to require approval by the owners through the mechanism of a vote. Daily management is effected through the elected strata council, and the council has both powers and responsibilities.

[Emphasis added.]

[58] Second, even if I were to accept the argument that the Corporate Parties could in theory have fully contracted out of the *Act* (which I do not), the language in the contractual clause relied upon by the Corporate Parties was too ambiguous to bind Mr. Ching to a “non-conforming strata” regime into the future. Taken at its highest, the clause in the Agreement merely committed Mr. Ching to a recognition, at the date of contracting, that the Strata Corporation had been governed in this manner in the past (i.e. the words “is a Triplex as a non conforming strata property” and “has not been run in compliance with the Strata Property Act” opposed to the words “will in future” or “will continue not to be run”). Absent express wording binding Mr. Ching to a future state of affairs I would find that this clause was insufficiently precise to bind Mr. Ching to a waiver of all protections under the *Act* following his purchase.

[59] Third, the position of the Corporate Parties on the petition that the *Act* does not apply to the Strata Corporation is contradicted by their own assertion in the Corporate Petition (at Part 2, para. 8) that the standard bylaws under the *Act* apply because the Strata Corporation has not incorporated any bylaws. It is also inconsistent with their assertion in Part 3: Legal Basis, para. 1a of the Corporate Petition that the *Act* in its entirety does apply. Their position is therefore internally inconsistent and illogical.

[60] I therefore reject the argument that the Strata Corporation or 089 are exempt from compliance with the *Act* because the Strata Corporation is a “non-conforming strata”. To the contrary, I conclude that any remedies sought by the Corporate Parties on the Corporate Petition must conform with, and be justified in relation to, the *Act*, other applicable legislation and/or the common law.

b) The Special Levy

[61] The Corporate Parties seek an order approving a Special Levy in the amount of \$150,000 to finance the Building Rehabilitation repairs recommended in a report prepared by Royal and that 41.7% of the Expenditures be allocated to Mr. Ching, among other remedies.

[62] The Corporate Parties cite no provision of the *Act* or the Standard Bylaws in support of the Special Levy and, in my view, no legal authority exists to justify the Special Levy.

[63] Section 108 of the *Act* is clear that a special levy must be approved by the owners of a strata corporation by way of a resolution passed by at least a three-quarters vote at an annual general meeting or a special general meeting. Under s.173(2) of the *Act*, the Court can also order a special levy upon application by the strata corporation if the resolution gets more than 50% but less than 70% of the vote at a duly called general strata meeting.

[64] Obviously, given the fact that the Corporate Parties have never called either an annual general meeting or a special general meeting, a vote on a resolution for a special levy was never conducted (let alone passed), nor can an application under s.173(2) of the *Act*, which requires at least 50% of the vote, be supported.

[65] In this case, the evidence was that the first notice Mr. Ching received that the Strata Corporation was seeking a Special Levy was upon service on him of the Corporate Petition. At no time prior to the commencement of the Corporate Petition was any notice given of a meeting or vote on a Special Levy to all owners of the Property.

[66] Thus, the request for an order imposing a Special Levy is fundamentally flawed under the *Act* and cannot succeed on that basis alone. The Corporate Parties seek a further order that “a $\frac{3}{4}$ vote of eligible voters at a general meeting for these purposes is not required” but assert no valid legal basis for such an order under the *Act* or otherwise, and I see no reason in law or in principle to grant such an order.

[67] Further, even if the request were not procedurally flawed, the evidence adduced by the Corporate Parties in support of the Special Levy is also insufficient to justify the relief sought for at least three reasons.

[68] First, in support of their argument for a Special Levy, the Corporate Parties rely upon an inspection report prepared by Royal dated January 24, 2024 (the “Royal Report”) and a cost estimate report prepared by Rencon Development Inc. (“Rencon”) on June 5, 2024, wherein Rencon provided a cost estimate for the repairs recommended by Royal in the amount of \$72,883.84 (the “Rencon Report”).

[69] As an initial observation, I note in passing that the Rencon Report suggests a cost for repair of less than half the \$150,000 amount of the Special Levy sought, and this discrepancy was not adequately explained at the hearing by the Corporate Parties. At a minimum this appears to be a substantial overreach by the Corporate Parties on their requested remedy without any adequate justification, and undermines the credibility of their position generally.

[70] More fundamentally, however, the Royal Report and the Rencon Report cannot support the relief sought because these consultants were not commissioned or retained by the Strata Corporation. On page 1 of the Royal Report, Royal stipulates that the “Client” is 089 and the invoice for the Royal Report was also billed to 089. Similarly, the Rencon Report and the bill for that report are addressed to PD Moore Homes. I have found that 089 has no standing on the Corporate Petition and PD Homes is not even a named party on the Corporate Petition. Moreover, neither 089 nor PD Homes have any legal authority under the *Act* to represent, or enter into contracts on behalf of, the Strata Corporation.

[71] Thus, since the Strata Corporation never adopted a resolution authorizing the Strata Corporation to commission either Royal or Rencon as consultants or to enter into contracts with these consultants, these reports cannot logically serve as the evidentiary foundation for the Special Levy. Moreover, to the extent that 089 and PD Moore Homes incurred fees or costs for the preparation of these reports these costs obviously cannot be passed on to owners of the other Strata Units (as has been

requested on the Corporate Petition) because these reports were never authorized or even contemplated by the strata council of the Strata Corporation. Those costs therefore clearly lie at the feet of 089 and PD Moore Homes, and not the Strata Corporation.

[72] Second, and in any event, neither the Royal Report nor the Rencon Report are even close to compliant with the requirements for expert reports under Rule 11-6(1) of the *Supreme Court Civil Rules*. For example, the qualifications of the alleged experts, the instructions provided, and the nature of the opinion being sought are not listed, nor is the certification required under Rule 11-2(2) included in either of these reports. I therefore find that both reports are inadmissible or, in the alternative, entitled to no weight.

[73] In this respect I also note that the reliability of the Rencon Report, which was a one-page document with a column of estimated costs without detailed background or explanation, was seriously open to question. Mr. Ching, for example, notes that some of the Rencon cost estimates grossly exceed what is reasonable, including:

1. an estimate of \$680 for gutter cleaning, nearly three times the amount paid for the same service procured by Ms. Forth, for which the Strata Corporation only previously had to pay about \$330;
2. an estimate of \$225 for removal of a single string of small decorative lights installed solely in the yard of Strata Lot 2, which Mr. Ching estimates could be taken down in a minute or so; and
3. an estimate of \$680 for the supplying and installing of anti-slip tape, something which Mr. Ching and Ms. Forth were able to perform for Strata Lot 2's stairs for \$30 of supplies and 30 minutes of time.

[74] Third, even if were to have found that the reports were admissible or entitled to any weight, I note that they do not support the proposition put forward by the Corporate Parties on the Corporate Petition, namely, that the costs of the proposed Building Rehabilitation repairs are costs that should necessarily be borne by the

Strata Unit holders, as opposed to costs that should be borne by WBI under the Common Property Warranty or by the owner developer. While it is true that the Strata Corporation has an obligation to maintain and repair the common property, and to pass that cost onto the strata unit holders where justifiable, the Strata Corporation also has the power under s. 171 to sue third parties as a representative of all owners, including WBI or the owner developer. In this case, by refusing to conduct any strata council meetings, the Corporate Parties have deprived the (to date non-existent) strata council of the opportunity to consider whether some or all of the costs of the Building Rehabilitation repairs are properly attributable to construction defects (as opposed to ordinary maintenance of the Strata Property) and whether these costs should accordingly be claimed against WBI under the Common Property Warranty or against the owner developer, 089, by legal action.

[75] In this latter respect, as I will address more fully in my discussion concerning the need for an administrator below, 089 and Mr. Moore have clearly put themselves in a perceived or actual conflict of interest position, to the extent that they have a direct personal interest in blocking any potential legal action by the Strata Corporation relating to construction defects against the owner developer.

[76] Moreover, it appears to me as a matter of first impression (without deciding the issue, as this is a matter that should properly first be addressed by the Strata Corporation) that the majority of the Building Rehabilitation repairs proposed by Royal in the Royal Report do indeed relate to building defects and not ongoing maintenance issues. In this respect I note that the invoice from Royal references an “exterior envelope review” (which implies a review of the integrity of the building envelope construction and not mere maintenance) and the Royal Report also identifies a number of deficiencies which are in my view clearly not in the nature of “maintenance” issues but are instead clearly related to deficient construction. For example, the Royal Report identifies “opening joints visible at the exterior fascia trim boards around the exterior of the building”, “loose soffits”, “missing anti-slip preventers”, “missing downpipe”, and “missing shingles”. The foregoing are

obviously construction defects and not maintenance issues, particularly where they involve items that were “missing” in the original construction.

[77] My first impressions are consistent with the conclusions in a responsive report commissioned by Mr. Ching in July 2024 by Glenn Duxbury, an independent home inspector (the “Duxbury Report”). In the Duxbury Report, Mr. Duxbury identified that 9 of the 14 deficiencies in the Royal Report were attributable to construction defects (and not maintenance issues) that were either not addressed during the original construction (a fault attributable to 089) or should have been addressed by WBI under the Common Property Warranty. The Duxbury Report only identified 2 of the 14 deficiencies as being attributable to maintenance issues, with the remaining 3 deficiencies being identified as unclear in the Royal Report or not identifiable.

[78] Thus, even if I had not found that the request for approval of the Special Levy was legally deficient on its face, I would nonetheless find that the Corporate Parties had failed to meet their evidentiary burden to justify a court order requiring the Strata Unit holders to pay the Special Levy in the amounts sought, in accordance with the “Cost Sharing Agreement” sought by the Corporate Parties or otherwise. This is a matter that must first be addressed by the future strata council of the Strata Corporation and not by a court in first instance.

[79] On the basis of all the foregoing I conclude that the request for an Order imposing a Special Levy should be dismissed.

c) Previous Expenditures

[80] The Corporate Parties seek an order requiring payment from Mr. Ching of his proportionate share of the Previous Expenditures, including a Rooter Squad Plumbing and Drainage (“Rooter Squad”) invoice in the amount of \$1,633.60, City of Vancouver utility bills in the amount of \$8,333.09, a Century 21 Gas & Heating Co. Ltd. (“Century 21”) bill in the amount of \$14,624.40 and an invoice from Royal in the amount of \$2,625.

[81] In my view this claim should be dismissed for three reasons. First, there was no evidence adduced by the Corporate Parties that these expenditures were authorized by the strata council of the Strata Corporation or that the Strata Corporation ever contracted for these services. For example, the Century 21 invoice was billed to 089, the Royal invoice was billed to 089, and the Rooter Squad invoice was billed to PD Moore Homes. While it is possible under s. 98 of the *Act* for the Strata Corporation to make “unapproved expenditures” for safety or to prevent significant loss or damage without approval at an annual or special general meeting, there was no evidence adduced by the Corporate Parties on the petition that the preconditions for “unapproved expenditures” applied in this case.

[82] Second, there was no documentary evidence that any of these invoices were ever paid by anyone, let alone the Strata Corporation. While it is true that the City of Vancouver utility bills were billed to the Strata Corporation, Mr. Moore’s claim in his affidavit that these bills were “paid by the Strata Corporation” cannot logically be true because the strata council of the Strata Corporation has never conducted a meeting or adopted a resolution, never created a contingency fund or operating fund under ss. 91-92 of the *Act*, and Mr. Moore adduced no evidence in his affidavit concerning exactly how these bills were allegedly paid.

[83] Third, there was also insufficient detail in Mr. Moore’s affidavit concerning the purpose and nature of the invoiced services to justify an order that the cost be allocated amongst all the Strata Unit holders.

[84] Thus, the claim for payment of the Previous Expenditures fails due to a lack of supporting evidence.

[85] Accordingly, for all the above reasons, the relief sought in the Corporate Petition is denied in its entirety. As noted above, the request for injunctive relief was expressly abandoned by counsel for the Corporate Parties during the hearing and I have therefore not addressed that issue in these reasons.

B. The Unit Owner Petition

[86] Mr. Ching applies for the following orders in the Unit Owner Petition:

1. The production by the Strata Corporation of a copy of each of the documents listed under section 35(2) of the Act, which 0899 has been responsible for keeping record of on behalf of the Strata Council of the Strata Corporation, including:

- (a) Resolutions that deal with changes to common property, including the designation of limited common property;
- (b) Written contracts to which the Strata Corporation is a party;
- (c) The budget and financial statement for the current year and for years 2020 to 2024;
- (d) Income tax returns, if any;
- (e) Correspondence sent and received by the Strata Corporation and those representing the Strata Corporation, including 0899 and Mr. Moore;
- (f) Bank statements, cancelled cheques, and certificates of deposit;
- (g) Any depreciation reports obtained by the Strata Corporation under section 94; and
- (h) Any reports obtained by the Strata Corporation respecting repair or maintenance. (hereafter referred to as the "Strata Corporation Documents")

2. A declaration that the Strata Corporation to perform its duties pursuant to section 165 of the Act, including the following:

- (a) holding Annual General Meetings ("AGM") pursuant to section 40 of the Act;
- (b) holding Special General Meetings ("SGM") and other meetings, as needed, pursuant to section 42 of the Act;
- (c) preparing annual budgets pursuant to section pursuant to section 21 and 103 of the Act;
- (d) preparing financial statements and books of account showing money received and spent and the reason for the receipt or expenditure, and any other records required by the regulations, pursuant to section 35 of the Act;
- (e) set up an operating fund account and contingency reserve fund account, with joint signing authorities of Mr. Moore and Anson Ching, pursuant to section 92 of the Act;
- (f) obtain depreciation reports pursuant to section 94 of the Act; and
- (g) perform all duties required under the Act and bylaws pursuant to section 165 of the Act.

3. An order for 089-9 and Mr. Moore to provide Anson Ching a key to access the common utility room within 30 days.
4. An order that 0899 and Mr. Moore cooperates with repairs to the Strata Lot 2 hose bib, as directed by Anson Ching, including any possible inspections and repairs to Strata Lot 3 due to water damage from the hose bib leak, with costs paid in accordance with the Schedule of Unit Entitlement.
5. An order that 0899 and Mr. Moore agrees and pays in accordance with the Schedule of Unit Entitlement for the services quoted by AAA Wildlife Control on May 6, 2024, for addressing the issue of birds nesting in the roof of the Property.
6. An order that 0899 and Mr. Moore repair the construction defects on the Property in accordance with the list provided in the Duxbury Condition & Repair Needs Report on August 26, 2024, with costs paid by the builder Mr. Moore.
7. An order that 0899 and Anson Ching must hire a property management company (the "Property Manager") to help carry out the duties of the Strata Corporation under the Act, including duties listed in paragraph 2 of Part 1.
8. That all Strata owners work with the Property Manager in good faith, including that all Strata owners and Strata Council are ordered to provide access to the Property's common property, as well as information, records, and documents requested by the Property Manager, and to provide such authorizations as are requested by the Property Manager to obtain any such access held by third parties which relate to the Strata Corporation.
9. That 0899 and Anson Ching are each to exchange the names of two proposed property managers and are to agree on one name on their proposed lists within 14 days of the order being pronounced. If the parties are unable to agree within 14 days of receiving the lists, they may apply for a court order appointing a Property Manager.
10. The property management fees shall be rendered monthly, and shall be payable by the Strata Corporation in accordance with the Schedule of Unit Entitlement.
11. If 0899, Mr. Moore, and Anson Ching do not act in good faith in working with the Property Manager, any party has liberty to apply to the Court for further directions.
12. In the alternative of the appointment of the Property Manager, pursuant to section 174 of the Act, an administrator (the "Administrator") shall be appointed to exercise the powers and duties of the Strata Corporation and Strata Council, with such powers and duties to be limited to the following:
 - (a) holding AGMs;
 - (b) holding SGMs and other meetings, as needed;
 - (c) preparing annual budgets;
 - (d) preparing financial statements;
 - (e) setting up an operating fund account;
 - (f) setting up a contingency reserve fund account;

- (g) reviewing all Strata records;
- (h) performing an audit of the Strata Corporation; and
- (i) directing and managing property maintenance and repairs, including access to any common property.

13. The Administrator shall be appointed for a term of two (2) years with liberty to apply for the renewal of this appointment.

14. The Administrator may retain professionals and other assistance, including but not limited to independent legal counsel, building inspectors, engineers, and building contractors, for opinion, advice and services in respect of his or her duties pursuant to this appointment.

15. The Administrator's fees shall be rendered monthly, and shall be payable exclusively by 0899 and Mr. Moore, or in the alternative, in accordance with the Schedule of Unit Entitlement.

16. The Administrator shall prepare a written report on the affairs of the Strata Corporation, including his or her recommendations respecting the resolution of all outstanding issues identified by the Administrator, including related costs, to be presented to the Strata owners, not less than six months following the date of appointment and continuing at six months intervals thereafter.

17. The Administrator shall deliver any document or documents to the Strata owners by email at the following addresses:

- (a) 0899 - per dip@moorehomesinc.com, unless otherwise directed by 0899 or Mr. Moore; and
- (b) Anson Ching - anson.hc@gmail.com.

18. The Administrator shall deliver detailed monthly statements of account to each Strata owner by email, unless within that period any Strata owner disputes his or her share of the account.

19. At the request of any party, the Administrator shall pass a disputed statement of account before the Registrar of the Supreme Court of British Columbia.

20. No person shall issue any process against the Administrator or any employee or representative of his or her employer or partnership related to this appointment without leave of the Court.

21. The Strata owners and Strata Council are ordered to provide access to all information, records, and documents requested by the Administrator, and to provide such authorizations as are requested by the Administrator to obtain information, records, and documents held by third parties which relate to the Strata Corporation.

22. The Administrator may appear on any proceeding relating to the Strata Corporation, and may be represented by counsel for that purpose; and

23. Subject to any rights of the owners under the Act, the Administrator will set the agenda and conduct all meetings of the Strata Corporation, but will not vote at those meetings. Neither the Administrator nor Strata Council

member will have a tie-breaking vote at any meeting of the Strata Corporation during the administrator's tenure.

24. The original Administrator may be substituted by another administrator either by mutual agreement in writing by all of the Strata owners, or by further order.

25. The Administrator be at liberty to apply to the Court for directions to assist and permit the discharge of the Administrator's duties hereunder.

1. Merits of the Unit Holder Petition

[87] I will address each of the requested orders (grouped together thematically for clarity, brevity and convenience where appropriate) in turn.

a) Production of Strata Corporation Documents

[88] Given my finding in relation to the Corporate Petition that the *Act* is applicable to the Strata Corporation, ss. 35(2) and 36(1) of the *Act* dictate that the Strata Corporation must produce the Strata Corporation Documents (as defined in the first order sought by Mr. Ching) to Mr. Ching. The Corporate Parties adduced no evidence in their affidavit material as to why these documents should not or could not be produced.

[89] Therefore, these documents shall be produced to Mr. Ching by the Strata Corporation (or if they are in Mr. Moore's possession or control, by him personally) within 14 days of this order.

b) Section 165 Declaration

[90] Under s. 165 of the *Act* this Court has the authority to order the Strata Corporation to stop contravening the *Act* and to perform a duty that it is required to perform under the *Act*.

[91] As noted in relation to the Corporate Petition, the Strata Corporation has been almost completely non-compliant with the *Act* since 2020. This raises a practical issue with respect to the sheer volume of contraventions that must be remedied to bring the Strata Corporation into full compliance. I will address this more fully in my discussion relating to the appointment of an administrator below, as it is my view that

the administrator will have an important role to play in preparing an inventory of contraventions by the Strata Corporation and developing a strategy to bring the Strata Corporation into compliance, in addition to other roles.

[92] In the interim, pending appointment of an administrator, I order the Corporate Parties to perform the following duties as required by the *Act*:

- 089, the "owner developer" of the Strata Property as defined under s. 1 of the *Act*, must hold a first annual general meeting, as required under s. 16 of the *Act*, and give notice in accordance with s. 45, attaching the documents referenced in s. 21. This meeting shall be held within 30 days of this order;
- Pursuant to s. 20 of the *Act*, 089 shall place before the first annual general meeting, and give the Strata Corporation copies of, all the documents required under s. 20;
- 089 shall establish a contingency reserve fund as required under s. 12 of the *Act* within 14 days of this Order;
- The Strata Corporation shall elect or appoint a strata council as required under s. 20(1) of the *Act*. In this respect I note that s. 9 of the Standard Bylaws states that if the strata plan has fewer than 4 strata lots or the strata corporation has fewer than 4 owners, all the owners will be appointed to the council at the first annual general meeting;
- The Strata Corporation shall pass a budget at the first annual general meeting as required under s. 21 of the *Act*;
- 089 (or Mr. Moore if they are in his possession or control) shall transfer control of the money and items referenced in s. 22 of the *Act* within one week of the first annual general meeting;

- The Strata Corporation shall at the first annual general meeting establish an operating fund for common expenses and a contingency reserve fund as required under s. 92 of the *Act*; and
- As more particularly explained below, the newly elected strata council of the Strata Corporation shall appoint an administrator at the first annual general meeting. Upon being appointed the new administrator shall perform the actions described under Schedule A of this decision including, without limitation, preparing an inventory of all provisions of the *Act* with which the Strata Corporation is not currently compliant and proposing a plan and schedule for the Strata Corporation to bring itself into compliance. The Strata Corporation shall bring itself into compliance with the plan set out by the administrator in a timely manner and in no event later than the next annual general meeting following the first annual general meeting.

[93] For greater certainty:

- All future decisions, expenditures and contractual commitments of the Strata Corporation shall be made solely by the Strata Corporation's strata council in compliance with the *Act* or alternatively by the administrator in compliance with the *Act*; and
- 089, Mr. Moore and PD Moore Homes shall cease forthwith to hold themselves out as acting on behalf of, or making decisions for, the Strata Corporation or a future strata council, and shall take no further actions in relation to the Strata Corporation's affairs which are not fully compliant with the *Act*.

c) Access to Common Utility Room

[94] Mr. Ching submits that Mr. Moore ordered a change of the lock to the Common Utility Room without approval of the Strata Corporation, in contravention of the *Act*. In my view, on the basis of the available evidence, Mr. Ching's submission has merit.

[95] Mr. Ching deposed that, from late April 2020 to early January 2024, he had unrestricted access to the Common Utility Room. Mr. Ching was provided a key upon taking possession of Strata Lot 2 and, when he lost the original key, he was provided a second copy of the key by the caretaker Mr. Rosebrugh in June 2020. Mr. Ching deposed that he knew his copy of the key worked as he had accessed the Common Utility Room on multiple occasions since taking possession of Strata Lot 2 in 2020.

[96] On January 9, 2024, Mr. Ching witnessed Mr. Rosebrugh removing something out of the Common Utility Room. Subsequently, Mr. Ching and Ms. Forth determined that the lock to the room had been changed and that the key they had for it no longer worked.

[97] On multiple occasions, Mr. Ching deposed that he made requests for clarifications on why Mr. Rosebrugh changed the lock to the Common Utility Room and for Mr. Ching's access to be renewed. No explanation was ever provided directly from 089 to Mr. Ching as to why the lock was changed. As of the date of the hearing, Mr. Ching still had no access to the Common Utility Room.

[98] None of this evidence was materially disputed in the affidavit material of the Corporate Parties.

[99] Removing access to the Common Utility Room from all owners is a significant change in use of common property, which requires a three-quarter vote pursuant to s. 71 of the *Act*. Section 71 provides:

Change in use of common property

71 Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless

(a) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage, or

(b) the change is approved by a resolution passed at an annual or special general meeting

- (i) by a majority vote, in the case of a change that is related to the installation of EV charging infrastructure or the management of electricity used by EV charging infrastructure, or
- (ii) by a 3/4 vote, in the case of any other change.

[100] The Corporate Parties adduced no evidence in support of the conclusion that any of the grounds for a change in use of common property are met in this case with respect to the Common Utility Room.

[101] Accordingly, I order 089 (or Mr. Moore if in his possession or control) to provide Mr. Ching with a working key to the Common Utility Room within 7 days of this order and to ensure that Mr. Ching has ongoing access to the Common Utility Room remains into the future, unless and until such access is changed in accordance with s. 71 of the *Act*.

d) and e) Maintenance Issues

[102] Mr. Ching deposes that there remain pressing maintenance issues for the Strata Property, including:

- a water leak on March 31, 2024, which flooded Strata Lot 1, and which was caused by Strata Lot 2's hose bib attachment located on the exterior wall of Strata Lot 1;
- evidence of birds nesting in the roof of the Strata Property since May 6, 2024; and
- clogged gutters.

[103] Mr. Ching deposes that 089 and Mr. Moore have failed to reasonably respond and address the issues, despite numerous follow-ups. Mr. Ching notes that the roof and exterior walls of the Property are common property, as detailed in the strata plan for the Property, where "CP" denotes common property.

[104] Again, none of this is materially disputed in the affidavit materials of the Corporate Parties.

[105] Section 72(1) of the *Act* requires the Strata Corporation to repair and maintain common property and common assets.

[106] While I am sympathetic to Mr. Ching's concerns relating to ongoing maintenance issues, there was insufficient evidence before me to make the orders sought by Mr. Ching at this time. Further, in my view this is a matter which is more appropriately addressed by the strata council of the Strata Corporation upon its election or appointment at the first annual general meeting. These matters should all be placed on the agenda for the first annual general meeting and resolved by the new strata council and administrator in a timely manner thereafter.

[107] If disputes arise relating to these matters, the *Act* provides avenues for redress before the courts.

f) Construction Defects

[108] I have addressed the issue of the construction defects in my analysis relating to the Corporate Petition.

[109] In my reasons relating to this issue raised in the Corporate Petition, I observed that neither the Royal Report nor the Rencon Report were compliant with the requirements for expert reports under Rule 11-6(1) of the *Supreme Court Civil Rules*. In my view, the responsive Duxbury Report is considerably more compliant with the *Supreme Court Civil Rules* than the Royal Report and the Rencon Report, to the extent that the Duxbury Report includes the qualifications of the expert, the instructions provided and the nature of the opinion being sought. However, even the Duxbury Report is not fully compliant with the *Supreme Court Civil Rules* because, for example, it does not include the required expert certification under Rule 11-2(2), which does create reliability concerns. Taken as a whole, it is my view that the evidentiary record is insufficiently complete to enable me to fully and fairly resolve this matter on the merits.

[110] Further, and more importantly, it would in my view be inappropriate under the statutory scheme for me to resolve this issue at this early stage in the proceedings.

Section 72 of the *Act* imposes an obligation on the Strata Corporation to repair and maintain common property and common assets and, in my view, the newly elected strata council should be given an opportunity to consider and resolve this issue before court intervention is sought.

[111] As noted above, if disputes arise relating to these matters, the *Act* provides avenues for redress before the courts.

g) to y) Appointment of Property Manager or Administrator

[112] Mr. Ching seeks a court order appointing a property manager or, in the alternative, an administrator.

[113] I have addressed the extraordinary extent of the Strata Corporation's non-compliance with the *Act* in relation to the Corporate Petition above and will not repeat that analysis here, apart from the somewhat self-evident observation that the Strata Corporation and 089 need to bring themselves into compliance with the *Act*.

[114] Mr. Ching has quite reasonably proposed the appointment of a property manager in the first instance and then, if that is unsuccessful, a subsequent application for the appointment of an administrator. That said, Mr. Ching expressed considerable concern at the hearing, due to the current open conflict with Mr. Moore, that the appointment of a property manager would likely produce an unsatisfactory result in terms of bringing the Strata Corporation into compliance with the *Act* due to an anticipated lack of cooperation from Mr. Moore, necessitating a further application by Mr. Ching to have an administrator appointed and resulting in additional costs for the parties in the future and the use of more court time.

[115] Based upon the evidence before me I share Mr. Ching's concerns. Under ordinary circumstances a progressive approach might be advisable, whereby a property manager is appointed at first and, if that proves to be unsuccessful, then a further court application for the appointment of an administrator could be later commenced.

[116] However, given the near complete non-compliance of the Strata Corporation with the *Act* over a period of five years, and the position of the Corporate Parties in the Corporate Petition that they have no legal obligation to comply with the *Act*, this matter clearly falls far outside the bounds of ordinary circumstances. For the reasons that follow my view is that the appointment of an administrator is clearly required under these circumstances to bring the Strata Corporation into compliance with the *Act* in a timely manner.

[117] The appointment of an administrator is governed by s. 174 of the *Act* which provides that this Court may appoint an administrator to exercise the powers and perform the duties of the strata corporation if, in this Court's opinion, such an appointment is in the best interests of the strata corporation:

Appointment of administrator

174(1) The strata corporation, or an owner, tenant, mortgagee or other person having an interest in a strata lot, may apply to the Supreme Court for the appointment of an administrator to exercise the powers and perform the duties of the strata corporation.

(2) The court may appoint an administrator if, in the court's opinion, the appointment of an administrator is in the best interests of the strata corporation.

[118] In *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493 at para. 11, Justice Harvey set out a number of relevant factors which inform the exercise of the court's discretion as to whether the appointment of an administrator is in the best interests of the strata corporation:

[11] In my view after reviewing the authority available, bearing upon this question, factors to be considered in exercising the Court's discretion whether the appointment of an administrator is in the best interests of the strata corporation include:

- (a) whether there has been established a demonstrated inability to manage the strata corporation,
- (b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to affairs of the strata corporation,
- (c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation,

- (d) where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation,
- (e) where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

In addition, there is always to be considered the problem presented by the costs of involvement of an administrator.

[119] In *1049442 B.C. Ltd. v. The Owners, Strata Plan LMS 1669*, 2018 BCSC 1631, Justice Branch also cautioned that courts are reluctant to appoint an administrator except where “absolutely necessary”:

[4] Generally, courts are reluctant to interfere with the democratic government of the strata community except where absolutely necessary. The cost of involving an administrator is also a factor to be considered.

[120] In my view, the appointment of an administrator is “absolutely necessary” in the unusual circumstances of this case, even taking into account the additional cost. In addressing this issue I will consider each of the factors set out in *Lum*.

A demonstrated inability to manage the Strata Corporation

[121] This factor is clearly established on the facts in my view, as the Strata Corporation in this case has not been “managed” at all since 2020. As noted above, no meetings have been held, no strata council has ever been elected and the Strata Corporation has taken few or none of the actions mandated by the *Act*.

[122] Instead, it appears that Mr. Moore has mistakenly assumed that he and 089 can act unilaterally on behalf of the Strata Corporation merely because 089 owns two of the three Strata Units. As explained above, Mr. Moore’s position is unsupported by any legal authorities. Unfortunately, however, given that Mr. Moore continues to hold this view and to control two of the three Strata Units, it appears predictable if not inevitable that the Strata Corporation will continue to be unmanaged in accordance with the *Act*. There is therefore a pressing need for an intervention.

Substantial misconduct or mismanagement

[123] In my view the evidence clearly demonstrates that there has been both substantial misconduct on the part of 089 and Mr. Moore in relation to the Strata Corporation and also substantial mismanagement of the Strata Corporation.

[124] Section 16(1) of the *Act* required 089, as the owner developer, to hold a first annual general meeting within the 6-week period that began 9 months of the first conveyance of a Strata Lot to a purchaser, which was the conveyance to Mr. Ching on March 6, 2020. The first annual general meeting should therefore have been held at the end of 2020 or the beginning of 2021. Instead, due to the inaction of 089 and Mr. Moore (and, to be fair, due to the failure of Mr. Ching to protest), a first annual general meeting was never held.

[125] Given that a first annual general meeting has never been held over a five-year period, and a strata council has never been elected, the result is that there has been no democratic governance at all of the Strata Corporation during that period. Among other things, this has been a clear contravention of the basic principle, set out in s. 4 of the *Act*, that the powers and duties of the Strata Corporation must be exercised and performed by a strata council. It has also resulted in a failure of the Strata Corporation to take many basic steps mandated by the *Act* to protect the interests of the Strata Unit holders, including establishing a contingency reserve fund, setting annual budgets, securing adequate insurance and other steps. In my view all of this amounts to nothing short of gross mismanagement.

[126] One example of the detrimental consequences of this mismanagement for the Strata Corporation was a loss of the Strata Property insurance coverage for 26 days from April 17 to May 13, 2024 attributable to a unilateral decision of Mr. Moore and 089 not to renew the policy. As set out in Mr. Ching's affidavit materials, the relevant facts relating to that loss of insurance (which were not materially denied by the Corporate Parties) were as follows:

- In April, 2024, Mr. Moore, without advising Mr. Ching, sought to change the original insurance coverage with Shill Insurance in an attempt to reduce the cost of the insurance;
- Schill Insurance informed Mr. Moore that it would not be changing insurance coverage without approval from all owners of the Strata Corporation. It also contacted Mr. Ching to advise him concerning Mr. Moore's actions;
- At that point Mr. Ching contacted Mr. Moore and expressed concern. Mr. Moore advised Mr. Ching that he would obtain a quote from a different insurance provider;
- Mr. Moore provided Mr. Ching with only a single quote from another insurance provider, Allied Insurance, on April 11, 2024. Mr. Ching and Ms. Forth raised concerns about the quote on the grounds that it had errors and did not adequately cover the Strata Property replacement value areas of coverages. The major concerns expressed by Mr. Ching were that:
 - The quote incorrectly assumed the Property was a 2-story building when in fact it has 3 stories plus a basement;
 - the quote incorrectly assumed that the Property was 100% renter-owned;
 - the quote did not have coverages for flood, sewer backup and earthquake in contrast to the Shill Insurance coverage; and
 - the quote had substantially lower coverage than previously provided.
- Allied Insurance retracted their quote on April 16, 2024 when they found out there was conflict over coverages between Mr. Ching and Mr. Moore, as they wanted to provide a quote for which all owners would approve;
- On April 16, 2024, counsel for Mr. Moore (Mr. Atwal) contacted Mr. Ching and suggested Mr. Ching reach out and find his own quotes;

- On April 17, 2024, Ms. Forth contacted Schill Insurance to request an extension of the current policy so the Strata Property insurance would not lapse. The broker confirmed over the phone that a 5-day extension of the current Strata Corporation policy could be provided at no added cost. Ms. Forth immediately informed Mr. Atwal;
- Upon Mr. Moore discovering that an extension had been granted, Mr. Moore called Schill Insurance to complain. Schill Insurance noted to Mr. Moore that there was no fee associated with the extension and that it was a courtesy. Nonetheless, due to Mr. Moore's complaint, Schill Insurance revoked the extension, resulting in the Strata Property becoming uninsured;
- Mr. Ching and Ms. Forth obtained three quotes, including a quote from Westland Insurance ("Westland"), and provided an update on these to Mr. Atwal on April 18, 2024;
- Mr. Atwal stated he would have firm instructions from Mr. Moore on which insurance quote to proceed with by April 22, 2024. However, Mr. Atwal instead did not provide direction until May 3, 2024, despite Mr. Ching checking in frequently throughout this period, because of the risks associated with the Strata Property being uninsured;
- An updated Westland quote was provided on May 3, 2024 and Mr. Moore did not respond to the Westland agent until May 7, 2024, at which time he proceeded to request additional changes to the quote; and
- Due to these requested changes from Mr. Moore, the quote was not finalised until May 13, 2024, which resulted in 26 days without insurance.

[127] It is clear on the basis of the foregoing that the loss of insurance for a period of almost a month was caused by Mr. Moore's decision not to renew the Shill Insurance policy, in circumstances where he had not arranged suitable replacement insurance in a timely manner. This situation was compounded by the fact that Mr.

Moore and 089 have impeded the election of a functional strata council that could have addressed a situation of this kind at an earlier stage and averted a crisis.

[128] Moreover, I find it significant that the actions of 089 and Mr. Moore in relation to the insurance and other matters are not attributable to mere inadvertence but to a wilful decision by Mr. Moore, without any legal justification, to treat the Strata Corporation as a “non-conforming strata” that, in his view, he was entitled to fully control by virtue of 089’s ownership of two of the three Strata Units. On the evidence, it is clear that this was a deliberate strategy on the part of Mr. Moore to oppress and obstruct the rights of Mr. Ching under the *Act*.

[129] Mr. Moore compounded this misconduct, in my view, by refusing to make disclosure to Mr. Ching on request of basic Strata Corporation documents and also financial documents relating to Mr. Moore’s actions on behalf of the Strata Corporation, including the Previous Expenditures, thereby denying Mr. Ching access to fair and reasonable transparency, as dictated by the *Act*.

[130] As the owner developer, 089 and its controlling mind Mr. Moore had a standard of care which is set out in s. 6 of the *Act*:

Owner developer's standard of care

6 (1) In exercising the powers and performing the duties of a council, the owner developer must

(a) act honestly and in good faith with a view to the best interests of the strata corporation, and

(b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

(2) Without limiting subsection (1), the owner developer must make reasonable efforts to pursue any remedies under warranties in existence with respect to the construction of the common property and common assets.

(3) Sections 32 and 33 do not apply to an owner developer exercising the powers and performing the duties of the council, as long as the owner developer complies with subsection (1) of this section.

[131] In my view, the evidence is clear that 089 and Mr. Moore have egregiously and repeatedly breached the s. 6 standard of care since 2020 in relation to the Strata Corporation. As a starting point I note that the decision of Mr. Moore and 089

not to conduct a first annual general meeting in accordance with the *Act* was clearly not the act of a “reasonably prudent person in comparable circumstances” nor was it in the “best interests of the Strata Corporation”, which has remained ungoverned by a strata council as a result of that decision.

[132] Further, in many different respects Mr. Moore and 089 have clearly placed themselves in a conflict of interest with respect to the interests of the Strata Corporation. It is unnecessary for the purposes of these reasons to review all these conflicts of interest. However, for illustrative purposes, I will address one conflict of interest concern relating to construction deficiencies and the warranty rights of the Strata Unit holders.

[133] Section 6(2) of the *Act* imposes on the owner developer the duty to make reasonable efforts to pursue any remedies under warranties in existence with respect to the construction of the common property and common assets. Following the first annual general meeting, the *Act* also contemplates that the Strata Corporation, and not the owner developer, will thereafter assume all responsibilities with respect to remedying defects in the common property and also pursuing warranty claims, including pursuing any legal claims against the owner developer and insurers. Thus, after the transfer of control from the owner developer to the Strata Corporation, the Strata Corporation would under ordinary circumstances take responsibility for ensuring that the owner developer complies with the duty to pursue warranty claims and would also pursue legal action against the owner developer as necessary with respect to the cost of repairing construction defects.

[134] Unfortunately, it appears that the conflict of interest created by Mr. Moore has potentially resulted in a real financial prejudice for Mr. Ching. As noted above, the Strata Property is covered by WBI with respect to both the New Home Warranty for owners and Common Property Warranty, which insure building systems, exterior cladding and building code for the Strata Corporation. Mr. Ching deposed that on March 19, 2022, a list of deficiencies for a 2-year New Home Warranty claim was provided by Ms. Forth for Strata Lot 2. Although some of the deficiencies were

addressed, others were not, including deficiencies similar to the ones raised in the Royal Report relating to the entirety of the building, such as caulking on window sills and pavers settling.

[135] Mr. Ching deposed that these deficiencies could have been raised by 089 under the New Home Warranty but were not. Mr. Ching further deposed that, to his knowledge, the Strata Corporation has not completed any inspections or reports related to the 15 months and 2 years warranty under the Common Property Warranty, or the building envelope warranty claim under the Common Property Warranty (which is a 2-5-10 warranty). This is obviously a serious concern because the Royal Report, which was prepared inside the 5-year limitation period, identified building envelope deficiencies and yet Mr. Moore and 089 apparently took no action on behalf of the Strata Corporation to make a warranty claim within that limitation period, which was now expired.

[136] Without deciding on the merits the question of any liability of Mr. Moore or 089 relating to insurance claims, I note that the lack of a timely response by Mr. Moore and 089 on behalf of the Strata Corporation with respect to building envelope claims under the Common Property Warranty at a minimum raises an issue with respect to the s. 6 standard of care.

[137] The foregoing is but one example of substantial misconduct and mismanagement on the part of 089 and Mr. Moore in relation to the Strata Corporation, but is sufficient in conjunction with the insurance issue to satisfy this *Lum* factor, in my view.

Whether there is a struggle among competing groups

[138] There is clear evidence in this case of a struggle between two groups: 089 (and its controlling mind Mr. Moore), which controls two of the three Strata Units, and Mr. Ching, who controls one of the Strata Units.

[139] The evidence indicates that there is real hostility between the two groups and, recently, a complete breakdown of communication. Moreover, the evidence also

indicates that Mr. Moore is vindictive and has sought to use his control of two of the three Strata Units to exact retribution against Mr. Ching following Mr. Ching's testimony at the RTB hearing that resulted in a monetary award against 089.

[140] Examples of Mr. Moore's retributive behaviour include changing the locks on the Common Utility Room, refusing to renew the insurance on the Strata Property for a period of over a month because he was unhappy that Mr. Ching and Ms. Forth had sought to involve themselves in securing an insurance quote and, ultimately, inviting Mr. Ching and Ms. Forth to a bogus "strata meeting" as a pretence to serve them with the Corporate Petition and then cancelling the meeting after effecting service on them. I would also add that, in my view, commencing the meritless Corporate Petition against Mr. Ching was itself an example of retributive behaviour, as it was a transparent attempt by Mr. Moore to punish Mr. Ching with a Special Levy and to demonstrate his (legally unjustified) power over the actions of the Strata Corporation.

[141] Mr. Ching expressed the concern that, if a property manager were appointed, Mr. Moore would continue to attempt to use his two of three votes to control or obstruct the property manager and to frustrate the democratic process, with the result that a further court action by Mr. Ching would inevitably be necessary to replace the property manager with an administrator. In my view this is a highly persuasive concern given the level of hostility displayed by Mr. Moore toward Mr. Ching and Mr. Moore's seeming contempt for the democratic requirements under the *Act*.

Whether appointment is necessary to bring order to the affairs of the strata corporation

Where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

[142] These factors are substantially similar and I will address them together.

[143] In my view an administrator is required to bring order to the affairs of the Strata Corporation and a property manager is insufficient given the history and context relating to the Strata Corporation.

[144] This is not a situation, as in many cases, where a strata corporation has managed to carry on ordinary operations and follow democratic processes but where it has been unable to resolve specific disagreements relating to discrete issues. Rather, this is situation where, by virtue of the intentional actions of the builder developer, the Strata Corporation has been completely disabled, resulting in a total failure of the democratic process. To use a medical analogy, this is not a situation involving the treatment of a specific symptom or body part but rather an attempt to resuscitate a patient who is suffering a complete body failure.

[145] Given the near-total non-compliance of the Strata Corporation with the *Act* to date, there is a need for a strong administrative hand with the requisite powers to conduct a full review of the Strata Corporation's non-compliance with the *Act* (effectively an informal audit), to mandate remedies and to restore order to the affairs of the Strata Corporation. This will be a challenge given Mr. Moore's track record of complete and intentional non-compliance with the *Act*, placing his own interests and those of 089 above the interests of the Strata Corporation, and his willingness to use the Strata Corporation and court processes to exact retribution against Mr. Ching. In my view, a property manager would have insufficient powers to overcome these challenges.

[146] Accordingly, I am ordering the appointment of an administrator in this case.

[147] Mr. Ching has proposed a series of orders relating to the appointment of an administrator, which are reasonable and well drafted. Mr. Ching is self-represented but, despite that fact, has done an admirable job is providing detailed and relevant arguments and evidence relating to both petitions. Nonetheless, in the interests of maintaining jurisprudential consistency, I would prefer to follow the order of Justice Skolrood (then a judge of this Court) in *Paget v. The Owners, Strata Plan LMS 1951*, 2021 BCSC 2111.

[148] The order in *Paget*, which was by consent, included clauses appointing a specific individual as administrator and also setting his fees. In this case, the parties have not yet agreed upon a particular administrator nor settled on his fees, although Mr. Ching has suggested two candidates who have confirmed interest, availability and fees: Patrick Williams, a lawyer in West Vancouver and Sean Michaels, managing broker of Obsidian Property Management.

[149] Accordingly I would modify the order in *Paget* to require that 089 shall have two weeks from the date of this order to review the qualifications and fees of these two candidates (which information Mr. Ching shall provide to Mr. Moore) and choose between them. For clarity, Mr. Moore and 089 shall have no right to propose a different candidate. If there is a disagreement between the parties on the appointment of an administrator, the parties have leave to return to court and I will remain seized for that purpose.

IV. ORDER

[150] The Corporate Petition is dismissed in its entirety.

[151] The Unit Owner Petition is amended to add the Strata Corporation as a respondent.

[152] The Unit Owner Petition is granted in part, as more particularly set out in the reasons herein. In addition, the request in the Unit Owner Petition for the appointment of an administrator is granted, subject to the terms set out in Schedule A to this decision.

[153] The parties have leave to speak to the issue of costs. In the event that leave is not sought, Mr. Ching, as the substantially successful party, shall have his costs relating to both petitions at Scale B.

“M. Taylor J.”

Schedule “A”

1. An Administrator shall be appointed to exercise all powers and perform all duties of Owners, Strata Plan No. EPS5979 (the “Strata Corporation”) and its Strata Council pursuant to section 174 of the *Strata Property Act*, subject to the democratic requirements of the *Strata Property Act*, and that such powers and duties be held to the exclusion of the Strata Council;
2. The Administrator shall be appointed for a term of one year, and the Administrator or the parties may apply to Court to shorten or extend the term of this appointment;
3. The original Administrator may be replaced by another Administrator either by mutual agreement in writing by all of the parties, or by further Order of this Honourable Court;
4. The Administrator shall prepare a written report on the affairs of the Strata Corporation, including their recommendations respecting the resolution of all outstanding issues identified by the Administrator, including bringing the Strata Corporation into compliance with the Act and related remedial measures and costs, to be presented to the owners of the Strata Corporation not less than six months following the date of appointment and as may be directed by this Court thereafter;
5. The Administrator shall deliver any document or documents to the owners of the Strata Corporation by mailing them by ordinary post to the strata lot, or by mailing them to the address provided in writing to the Administrator, or to such other place in such other manner as directed by this Honourable Court;
6. The Administrator shall deliver a detailed monthly statement of account to each owner of the Strata Corporation which accounts will be paid by the Strata Corporation immediately after 30 days, unless within that period any owner disputes their share of the account under paragraph 7 of this Order;
7. At the request of any party, the Administrator shall pass a disputed statement of account before the Registrar of the Supreme Court of British Columbia;

8. No person shall issue any legal process against the Administrator or any employee or representative of their employer or partnership related to this appointment without leave of this Court;
9. There shall be an accounting of common expenses paid for by the parties;
10. The Administrator shall reconcile all common expenses paid for by the parties, and include in their report recommendations regarding reconciliation, reapportionment, and reimbursements to be apportioned between the strata lots and the Strata Corporation;
11. The Administrator's scope of review and written report on the affairs of the Strata Corporation shall include an audit of all modifications, additions, alterations, renovations, and related encroachments made by each strata lot to the common property and/or limited common property, common assets and strata lots;
12. The Administrator shall provide recommendations regarding the apportionment of future expenses related to: all repairs, maintenance, modifications, additions, alterations, renovations, to the common property and/or limited common property, common assets and strata lots. The Administrator shall also provide recommendations regarding any recommended warranty claims or claims against the owner developer relating to building or construction deficiencies;
13. Future expenses for repair and maintenance of common property and limited common property shall be paid for by the owners in accordance with the unit entitlement of the strata lots unless otherwise agreed to by the parties or by further Order of this Court;
14. The parties shall provide access to their respective strata lots as may be requested by the Administrator and shall provide access to all information, records and documents requested by the Administrator that relate to the Strata Corporation and shall provide such authorizations as are requested by the Administrator to obtain information, records and documents held by third parties;

15. The Administrator may retain any necessary professionals and other assistance, including but not limited to independent legal counsel, accounts, building inspectors, engineers, and building contractors, for opinion, advice and services in respect of their duties pursuant to this appointment;

16. The Administrator may appear on any proceeding relating to the Strata Corporation and may be represented by legal counsel for that purpose;

17. Subject to any rights of the owners under the Strata Property Act, the Administrator will set the agenda and conduct all meetings of the Strata Corporation, but will not vote at those meetings. Neither the Administrator nor any member of the Council will have a tie-breaking vote at any meeting of the Corporation during the Administrator's tenure;

18. If any resolution(s) of the owners are required to give effect to any of the Orders set out herein, and if such resolution(s) do not pass at a Council Meeting or General Meeting of the Strata Corporation, the Administrator and/or any party shall have leave to apply to this Court for an Order approving the resolution(s);

19. The Administrator shall be [either Patrick Williams or Sean Michaels - to be selected by 089 in accordance with the above order];

20. The remuneration of the Administrator shall be paid by the Strata Corporation at the rate of ____ [from the fee schedule of either Patrick Williams or Sean Michaels, or as otherwise agreed between the Strata Corporation and the chosen candidate]; and

21. The Administrator and each party shall be at liberty to apply to the Court for directions to assist and permit the Administrator to discharge his or her duties hereunder.