

**Court of King’s Bench of Alberta**

**Citation: 2526646 Alberta Ltd v Condominium Corporation No 0313512, 2026 ABKB 146**

**Date:** 20260302  
**Docket:** 2501 01997  
**Registry:** Calgary

Between:

2526646 Alberta Ltd., Adam K. Muzychuk  
and Andrea M. Muzychuk

Cross Applicants

- and -

Condominium Corporation No. 0313512, Andrew Stephens, John Haslett,  
Beverly Wittmack, Linda Black, and John Doe

Respondents

**Corrected judgment:** A corrigendum was issued on March 3, 2026; the corrections have been made to the text and the corrigendum is appended to this judgment.

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**Reasons for Decision  
of the  
Honourable Justice C.B. Thompson**

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**I. Overview**

[1] On May 29, 2024, Condominium Corporation No. 0313512 operating as Mountains Reach Condominium Corporation (“Condo Corp” or “Mountains Reach”) commenced Action No. 2401-07482 by origination application (the “Injunction Action”) against 2526646 Alberta Ltd., Adam K. Muzychuk, and Andrea M. Muzychuk (the “Owners”).

[2] The Condo Corp is a bare land condominium corporation located in Canmore, Alberta near the Silvertip resort. 62 units are bare land condo units owned by individual owners. The common property consists of the roadway, sidewalks, streetlights, small areas of common landscaping and the sanitary sewer systems. There are no common property buildings.

[3] The Injunction Action seeks to enforce section 59 of the Condo Corp’s Original Bylaw that claims to prohibit the Owners from commercial use of their Condo as short-term rentals

(“Commercial-Use”), and section 49 of its Amended Bylaw that claims to prohibit the Owners from the use of their condo unit (“Condo”) as short-term rentals (“STR”).

[4] On February 6, 2025, in response to the Injunction Action, the Owners commenced Action No. 2501-01997 by statement of claim (the “Claim Action”) against the Condo Corp and its individual current and former Board of Directors.

[5] The Claim Action seeks, among other things, to declare the Amended Bylaw invalid and its associated Consent Order unenforceable as against the Owners; an injunction prohibiting the Condo Corp from enforcing the Amended Bylaw until lawfully amended; and damages arising from the Condo Corp’s alleged improper conduct through its Board members in relation to the Amended Bylaw and the Commercial-Use enforcement against the Owners.

[6] In further response to the Injunction Action, the Owners brought this Cross-Application against the Condo Corp and its individual current and former Board members (the “Respondents”) seeking to convert the Condo Corp’s Injunction Action to a statement of claim action and to consolidate the Owners’ Claim Action with the converted Injunction Action.

[7] The key issue in this Cross-Application is whether the Injunction Action should be converted to a statement of claim action and be consolidated with the Claim Action. The issue engages provisions of the *Alberta Rules of Court*, Alta Reg 124/2010 (“Rules”), the *Condominium Property Act*, RSA 2000, c C-22 (“CPA”), the *Judicature Act*, RSA 2000, c J-2 and common law.

[8] The Owners argued, among other things, that the Injunction Action should have been brought by statement of claim considering its scope, complexity, and the substantial factual disputes, all of which make it unsuitable for the originating application summary process. The Owners further argued that the Injunction Action and the Claim Action require consolidation because they have common questions of law and facts, arose from the same series of events, involve nearly identical sets of parties, involve similar set of witnesses on the same sets of facts, will result in duplication of process and potential inconsistent verdicts on the same sets of facts.

[9] The Respondents oppose the Cross-Application for conversion and consolidation on the basis that the Injunction Action involves narrow legal issues and the material factual record required to determine the injunction is complete and undisputed. The Respondents further argued that, given the narrow overlap of the two Actions, consolidation is inappropriate, primarily because of the delay it will cause to the Injunction Action that is ready for hearing and the consequential prejudice to the Condo Corp.

[10] For the reasons that follow, I grant the Cross-Application. I vary paragraph 1 of the Order of the Honourable Justice Malik issued and filed April 24, 2025 and paragraph 2 of the Order of the Honourable Justice Malik issued May 30, 2025 and filed June 2, 2025. The Special Chambers hearing scheduled for the Injunction Action shall be vacated.

[11] If the Condo Corp wishes to continue its Injunction Action, I order the Originating Application to be converted to a Statement of Claim and the Injunction Action to be continued as statement of claim action under the *Rules* (“Converted Injunction Action”).

[12] I consolidate the Converted Injunction Action and the Claim Action to continue as a single statement of claim action under Action No. 2401-07482.

[13] If the Condo Corp wishes to continue its Injunction Action as the Converted Injunction Action, the initial Procedural Order provided under Issue #2 shall apply.

## **II. Issues**

[14] Based on the parties' filed materials they put before the Court in this proceeding, and their oral submissions, the issues to be determined are:

- (a) whether the Injunction Action should be converted and continued as a statement of claim action pursuant to rule 3.2(6) of the *Rules*;
- (b) whether the Injunction Action and the Claim Action should be consolidated into a single action; and
- (c) alternatively, whether: (i) Disclosure of Information in Part 5 of the *Rules* should be applied to the Injunction Action pursuant to rule 3.10 and 3.12; (ii) evidence from the Cross Application should be used in both Actions pursuant to rule 3.14(1)(f) of the *Rules*; and (iii) the Owners should be permitted to file a further cross-application.

## **III. The Evidentiary Record**

[15] In this Cross Application proceeding, the parties put before the Court their filed pleadings in both Actions, their interlocutory applications and the Court Orders. They also provided their filed Affidavits with exhibits, transcripts of cross-examinations of their Affiants and the related undertaking responses.

## **IV. Issue 1: Should the Injunction Action be converted and continued as a Statement of Claim Action pursuant to rule 3.2(6) of the *Rules*?**

[16] The Cross-Application seeks an order converting the Injunction Action to a statement of claim pursuant to rule 3.2(6), with associated procedural directions including filing of pleadings and Disclosure of Information under Part 5 of the *Rules* ("Part 5 Disclosure") among other things.

[17] I find that, if the Condo Corp wishes to continue its Injunction Action, the Injunction Action shall be converted and continued as a statement of claim action under the *Rules*. In that case, the Procedural Order provided under Issue #2 shall apply.

### **A. Applicable Law**

[18] Rule 3.2(2) of the *Rules* provides that a statement of claim must be used to start an action unless: (a) there is no substantial factual dispute; (b) there is no person to serve as defendant; (c) a decision, act or omission of a person or body is to be the subject of judicial review; (d) an enactment authorizes or requires an application, an originating application, an originating notice, a notice of motion or a petition to be used; (e) an enactment provides for a remedy, certificate, direction, opinion or order to be obtained from the Court without providing the procedure to obtain it; or (f) an enactment provides for an appeal to the Court, or permits a reference to the Court, or provides for a matter to be put before the Court, without providing the procedure to be used; in which case an originating application may be used to start the action.

[19] Pursuant to rule 3.2(6) of the *Rules*, if an action started in one form should have been started, or should continue in another, the Court may make any procedural order to correct and continue the proceeding and deal with any related matter.

[20] Alberta Courts have consistently interpreted these rules. The default form of commencing an action in Alberta is the statement of claim; originating application is the exception. See Reed, J. and Poelman, J., *Civil Procedure and Practice in Alberta* (Toronto: LexisNexis Canada Inc., 2023) p 49.

[21] In my view, rule 3.2(6) of the *Rules* applies in various situations including where: (a) an action was wrongly commenced by originating application *ab initio*; or (b) emerging disputed issues changed the character of the action such that it should not continue by originating application.

[22] Alberta Courts have held that rule 3.2(6) (formerly Rule 753.16(1)), in appropriate circumstances, may be used as a saving provision to avoid denial of a remedy due to a technical defect: *Patrus v. Alberta (Workers' Compensation Board, Appeals Commission)*, 2011 ABQB 523 paras 45-56 revd on other grounds *Patrus v Alberta (Workers' Compensation Board)*, 2014 ABCA 117 para 27; and *Judicature Act*, RSA 2000 c J-2, s 8. See also *Karas v Mongeon*, 2018 ABQB 149 paras 27 to 33, which held that it would have been appropriate to permit an unjust enrichment property action, incorrectly commenced through Form FL-10, to continue in the correct form by converting the Form FL-10 into a statement of claim.

[23] Thus, the Court may “recast the proceedings under Rule 753.16 [rule 3.2(6)]”, as “that rule confirms that the form of the application is no impediment to the relief applied for”: *Alberta (Workers' Compensation Board) v. Buckley*, 2007 ABCA 7 para 14 leave to appeal dismissed *Workers' Compensation Board v. Joanne Katy Komanak Administratrix of the Estate of the Late Daniel Leonard Entz, Appeals Commission of the Workers' Compensation Board, Darren Rodrick Buckley, H & R Transport Ltd.*, 2007 CanLII 37184 (SCC).

[24] In *Barr v Alberta (Attorney General)*, 2016 ABCA 179 paras 1-2, the Court of Appeal exercised discretion in accordance with rule 3.2(6) and ordered that the originating application for judicial review and declaratory relief be converted to a statement of claim based on “the emerging substantial factual disputes between the parties.” The applicants were granted leave to file an amended statement of claim within one month and the Crown to file an appropriate statement of defence in accordance with the *Rules*.

[25] The applicants (converted plaintiffs) chose not to file an amended statement of claim. Their originating application was therefore deemed to be the statement of claim. The Crown filed a statement of defence as directed by the Court of Appeal: *Barr v Alberta (Attorney General)*, 2016 ABQB 671 paras 10-11 [*Barr QB*].

[26] In *Genstar Development Company v. Plains Midstream Canada ULC*, 2012 ABQB 457 paras 19-22, Plains applied under rule 3.2(6) to convert into a statement of claim Genstar’s originating application to remove a utility right of way from title. Applications Judge Prowse found that the legal issues were complex and unsettled; and required a complete and nuanced findings of fact from a trial rather than on paper record from an originating application. The Judge found that even if it was permissible to have started the action by originating application, it should continue in the form of a statement of claim. The Judge held that the correct procedural order in that case was “to deem the originating application and supporting affidavit to be a

statement of claim”, gave the respondents 30 days to file a statement of defence, and thereafter the action was to proceed as if commenced by statement of claim.

[27] In *McKay v 692591 Alberta Ltd*, 2015 ABQB 95 para 10, Strekaf, J. (as she then was) found that, in addition to other significant factual dispute on the ownership of the water distribution system, the underlying issue of termination had to be determined by statement of claim. She directed the action to proceed as if it was initiated by statement of claim, and that the original claimants were at liberty to file a statement of claim within two weeks, “which shall be treated as if it was filed when the originating application was filed”: para 26.

[28] Further, this Court has held that even where there is not a substantial factual dispute, courts have significant discretion under the *Rules* to direct originating application actions including rules 1.4(1), 3.2(6), 3.10(1), 3.12, 3.14(1): *Royal & Sun Alliance Insurance Company of Canada v Co-Operators General Insurance Company*, 2023 ABKB 426 at para 37; *Kneehill County v Risler*, 2024 ABKB 89 para 68; *Venini v Venini*, 2023 ABKB 524 para 61.

[29] In *Royal & Sun Alliance*, Marion J. held that the Court may determine that an action commenced by originating application is better suited for trial or some other process with *viva voce* evidence: paras 37-38 citing *Bank of Canada v Racher*, 2017 ABQB 181 at para 17.

[30] Further, the matter commenced by originating application must be capable of summary determination: *Dash Distributors Inc. v Powlik*, 2012 ABQB 770 paras 9 and 15.

[31] Hence, Alberta Courts have confirmed that the test for summary judgment set out in *Hryniak v Mauldin*, 2014 SCC 7 and *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 applies to originating applications with some modifications and additional discretionary considerations: *Royal & Sun Alliance*, para 39; *Kneehill County*, para 69; *Venini*, para 62. See also Stevenson and Côté, *Alberta Civil Procedure Handbook* 2026 ed (Edmonton: Juriliber, 2026) p 3-9.

[32] The Court has the discretion to convert an originating application action into a full-fledged statement of claim action if trial with live witnesses is needed, discovery of any kind is warranted, and no rule or statute mandates an originating application: Stevenson and Côté, p 3-9.

[33] The question to determine, in an originating application process, is whether it is “possible to fairly resolve the dispute on a summary basis”, or whether the court is left “with sufficient confidence in the state of the record” bearing in mind that there are ordinarily no formal pleadings, records discovery, or questioning under Part 5 of the *Rules*: *Royal & Sun Alliance* para 40.

[34] The modified summary judgment principle applies to originating application for a statutory injunction sought pursuant to section 554 of the *Municipal Government Act*. While the Court may hear an injunction application summarily when the facts and the law are clear, the Court is not obligated to do so: *Kneehill County*, para 70 citing *Newell (County No 4) v Dola*, 2003 ABCA 371 para 11; *Lamont (County No 30) v Smith*, 1997 CanLII 14928 (ABKB). Further, if there are material conflicting evidence and credibility issues, a summary process may not be appropriate: *Newell (County No 4)*, para 13.

[35] While there are aspects of law and policy engaged in an application for injunction, the decision to grant an injunction is heavily dependent on the context and the equities, both of which are heavily dependent on the facts of each case. Each case must be determined essentially upon its own particular facts and circumstances: *Edmonton Flying Club v Edmonton Regional*

*Airports Authority*, 2013 ABCA 91 para 35; *Plains Midstream Canada ULC v Keyera Partnership*, 2021 ABQB 871 para 23.

[36] To properly delineate and determine the issues, facts and circumstances of each case in originating application injunctions, the Alberta Court of Appeal has considered whether it is necessary for a respondent to commence their own cross-suit to seek their own relief or remedies: *Allard v. Shaw Communications Inc.*, 2010 ABCA 316 para 9.

[37] Relying on sections 5(3)(f) and 8 of the *Judicature Act*, the Court of Appeal held that a cross-suit was not necessary and “[i]t has never been the practice in Alberta to require formal notice of the grounds for opposition to a pending originating notice or an ordinary motion, still less to require a cross-suit”: *Allard*, para 10. The Court confirmed that the *Rules* merely requires notice of opposing evidence.

[38] The Court of Appeal further held that the respondent’s responding affidavit, which stated that it was made “for an Order directing that ...”, “in substance is a notice of motion. To require that it reside within the more spacious grounds of its own sheet of 8-1/2” x 11” paper adorned with a style of cause would be the height of formalism”: *Allard*, para 12 citing *Houg Alta. v. 417034 Alta.* (1991) 1991 ABCA 178, 117 A.R. 196, 198-99.

[39] Besides, as an equitable remedy, an injunction, especially a permanent one, is subject to equitable defences and maxims: *Allard*, para 31. An applicant for injunction must have clean hands, and he who seeks equity must do equity. Further, an injunctive relief will be withheld if it would be used for an illegal purpose: *Allard*, para 32.

[40] Equity takes a rather holistic view of the positions of all the parties: *Communications, Energy and Paperworkers Union, Local 707 v. Suncor Energy Inc.*, 2012 ABCA 307 para 5.

[41] Even a clear breach of a clear right is not enough to force the court to issue an injunction: *Allard*, para 32. Context does not become irrelevant just because a legal right is clear: *Plains Midstream*, para 24. Equity softens the sharp edges of the law and circumstances may dictate that strict legal rights should not be enforced: *Plains Midstream*, para 24.

[42] The injunction sought must be consistent with the principles on which the court grants equitable relief. For example, “relief is withheld if the relief would be oppressive, harsh, illegal, or against public policy”: *Allard*, para 32.

[43] Additionally, the CPA legislative scheme, as amended, does not prescribe a particular procedure for actions before the Court. Section 66 provides that the Court may direct the trial of an issue, and may give any directions as to all matters, including filing of pleadings that appear necessary and proper for the final hearing of the application: CPA, s 66(2) and (4). Section 67 also provides for an application to the Court by “interested party” for “improper conduct” as defined in that section and does not prescribe a procedure.

[44] Therefore, the *Rules* and case law as discussed above apply without restrictions. I now turn to the facts of this case.

## **B. Application of the Law to the Facts**

[45] The Respondents opposed the conversion of the Injunction Action to a statement of claim action. They argue among other things that in the absence of legal impediment the Condo Corp is entitled to choose its method of enforcing its rights, the material facts are not in dispute, and there is no substantial factual dispute in this case.

[46] Based on my analysis of the pleadings, the evidentiary record for the Cross-Application, my inferences therefrom, and the written and oral submissions of the parties I find as follows.

[47] The Originating Application in summary:

- (a) seeks a permanent injunction restraining and prohibiting the Owners from operating their Condo for a commercial purpose and/or as an STR, and to register the injunction as a restrictive covenant on the Owners' title to run with the land and bind successors in title.
- (b) asserts that both the Commercial-Use provision and the Amended Bylaw were "validly and properly passed and are legally binding upon all unit owners" "with the rare exception of a few grandfathered exceptions arising from a compromise of the Previous Action." (paras 5 and 23)
- (c) asserts that the Owners purchased their Condo with notice of the Amended Bylaw including the explicit prohibition on STR, and that the Owners ought to have been fully aware of the restriction on STR. (paras 9 and 24)
- (d) describes the May 2020 lawsuits (Previous Action) by three groups of owners (Previous Plaintiffs) challenging the validity of the Amended Bylaw and seeking permission of continued STR in their condos. It asserts that the resulting Consent Order declared the Amended Bylaw to be valid, acknowledged the prohibition of STR, and permitted the Previous Plaintiffs to continue STR in their Condos "under a grandfathered exception to the Amended Bylaws." (paras 10 to 12)
- (e) asserts that the Owners were provided "comprehensive information" about the Previous Action including the Consent Order, and the Owners have been aware and "fully informed about the restriction on Short-Term Rentals and its implications prior to and throughout their ownership" of their Condo. (paras 13 to 14)
- (f) asserts that the Owners are "advertising" and "renting" out their Condo as STR on online forums such as Airbnb and VRBO in direct violation of the Amended Bylaw. (paras 15)
- (g) raises the nature and character of the Mountains Reach community, of which STR are a violation and a nuisance, and the risk of the Owners unilaterally altering the community's nature and character. It asserts that the prohibition of STR is "an integral part of the agreement that all unit owners enter into when purchasing a unit in Mountains Reach, and were democratically enacted by the Mountains Reach community", in other words, the Bylaw. (paras 17, 26, 27 and 28)
- (h) asserts the Condo Corp's powers under the Amended Bylaw to issue administrative fines for Bylaw violations and solicitor and his own client costs for enforcement of the Bylaws. It describes the notices and fines the Condo Corp issued to the Owners to discontinue STR in their Condo, and the Condo Corp's instructions to its Property Manager to send similar fines and notices to the Owners each week their Condo "is being advertised as a Short-Term Rental". It confirms that the Property Manager continues to do so. (paras 18 to 20)

[48] The Originating Application is supported by six Affidavits. The Condo Corp's substantive Affidavit was sworn by Andrew Stephens and filed May 29, 2024. It asserts the information in the Originating Application, provides additional information and background details including the Canmore Bylaws and Tourist Home classification, and the Board's "standard procedure for administering fines". It also exhibits records.

[49] The Response Affidavit of the Owners was sworn by Adam Muzychuk and filed on February 18, 2025. The Response Affidavit responds to the Injunction Action and supports this Cross-Application. The Response Affidavit provides the Owners' version of events in respect of STR prior to and since the purchase of their Condo, exhibits documents, and joins issues with the Originating Application. The Response Affidavit in summary:

- (a) provides the circumstances of the Owners' purchase of the Condo from Foreclosure proceedings and the representation of the Condo as "an income-generating property through short-term rentals" in the Foreclosure proceedings. It provides the information the Owners had at the time of purchase including the multi-year history of STR in the community and in the Condo they purchased, that the Bylaw STR prohibition was not being enforced and its validity was in question, and the section 59 commercial use restriction was not enforced and had never been used to prohibit STRs. (paras 7 to 15)
- (b) denies complaints or nuisance from the Owner's Condo. (paras 17 to 18)
- (c) challenges the validity of the Amended Bylaw, the enforceability of the Consent Order against the Owners, the lack of notice or information to the Owners prior to the Consent Order and its STR exemption for some owners. (paras 21 to 26)
- (d) details the Condo Corp's Fining Scheme and Fining procedure against the Owners in connection with enforcing the Amended Bylaw, the harm suffered by the Owners as a result of the STR Fining Scheme, and the Condo Corp's improper enforcement of the Amended Bylaw through the Fining Scheme. (paras 27 to 65)
- (e) provides the Owners' prejudice arising from the Condo Corp's withholding, delayed, and piecemeal disclosure of information prior to and in the Injunction Action. It also details outstanding disclosure and seeks a Procedural Order to cure the prejudice on the Owners. (paras 66 to 78)
- (f) provides the Owners' claims and causes of action in respect of the Condo Corp's Amended Bylaw and enforcement of the STR prohibitions against the Owners among other things, the remedies the Owners seek in relation to their claims, and attaches the Owners' Statement of Claim as Exhibit "P". (paras 78 to 80)

[50] I disagree with the Respondents that the Injunction Action raises a "narrow legal issue". Such characterization largely ignores the issues the Condo Corp itself raised in its Originating Application and its supporting Affidavits, the issues and claims the Owners raised in their Response Affidavit, and the significant matters on which the parties have joined issues.

[51] I agree with the Owners that the Injunction Action is not a straightforward case of bylaw enforcement. I find that the scope and complexity of the Injunction Action go far beyond the Respondents' description. I distinguish *Condominium Corporation No 042 5177 v Kuzio*, 2020 ABQB 152 where the validity or enforceability of the bylaw authorizing short term rentals was not contested.

[52] I disagree with the Respondents that there is no substantial factual dispute in the Injunction Action. I disagree that the Bylaw validity is a legal issue to be resolved by legal arguments only.

[53] I find inextricable the issues of Amended Bylaw validity, enforceability as against the Owners through the Consent Order, and improper conduct and oppression in relation thereto. I find that there are material conflicting evidence and credibility issues on key issues raised in the Condo Corp's Originating Application and in the Owners' Response Affidavit in the Injunction Action.

[54] The Respondents in their written Brief distinguished between undisputed facts they said are required to determine the Injunction Action and disputed facts they said are only material to the Claim Action defined as "Disputed Facts".

[55] I disagree with the Respondents that their Disputed Facts are not required to determine the Injunction Action. The Respondents' written Brief at paragraph 27 provided their "stark examples" of their "Disputed Facts" some of which are:

- (a) Alleged Condo Corp improper administration and enforcement of bylaws;
- (b) Alleged inappropriate conduct by Condo Corp Board members;
- (c) Alleged arbitrary and high handed application of fines by the Condo Corp;
- (d) Alleged Condo Corp board extreme animosity against Plaintiffs;
- (e) Alleged misuse powers of the Condo Corp to effect Board member wishes;
- (f) Alleged failure of the Condo Corp Board to act in best interests of the Condo Corp and Complex unit owners;
- (g) Alleged unfair prejudice by the Condo Corp board against the Applicants;
- (h) Alleged failure by the Condo Corp board in acting in their own self interest contrary to the best interests of the Complex unit owners;
- (i) Alleged unreasonable intrusion and interference by Board members into the Plaintiffs privacy and quiet enjoyment; and
- (j) Alleged unreasonable and extensive monitoring of the Applicants by the Respondents.

[56] I find that the Respondents' Disputed Facts are material to the matters the parties raised, and upon which they joined issues, in the Injunction Action. The Disputed Facts are live issues in the Injunction Action.

[57] Other potential live issues that may engage the Disputed Facts in the Injunction Action include:

- (a) whether the following constitute improper conduct, oppression, or other claims made by the Owners under section 67 of the CPA:
  - (i) the STR fines against the Owners (defined as "Fining Scheme" by the Owners), which the Condo Corp pleaded in its Originating Application as part of inadequate remedies;

- (ii) the original grandfathering of STR for certain class of condo owners in the 2018 Amended Bylaw, and the subsequent STR exemption of additional condo owners from the STR Bylaw provision in the 2023 Consent Order, all of which are alleged to have created two classes of condo owners; and
- (iii) the Bylaw validity declaration in the 2023 Consent Order alleged to bind all owners;
- (b) the enforceability of the Amended Bylaw against the Owners by virtue of alleged representations made to the Owners in respect of STR at all material times including prior to and at the time of purchase of their Condo, and prior to their entering into agreement with the Condo Corp by signing the Bylaw;
- (c) whether the Amended Bylaw prohibits “advertising” for STRs, which will involve interpretation of the Condo Corp’s Bylaw provisions in context; and
- (d) the implication, if any, of the Canmore Bylaws, and its classification and/or alleged taxation of the Owners’ Condo as “Tourist Home”, on the Condo Corp’s enforcement of the Commercial-Use and STR prohibitions against the Owners’ Condo.

[58] In addition, the Condo Corp seeks an equitable remedy of permanent injunction, which is heavily dependent on the factual context and equities of the parties, and is subject to equitable defences and maxims including clean hands and the mandate to do equity. Further, injunctive relief will not be granted if it would be used for an unlawful purpose or if it would be oppressive, harsh or illegal: *Allard*, paras 31-32.

[59] The Owners’ grounds and claims for opposing the Injunction Action include, among other things, invalidity of the Amended Bylaw, unenforceability of the Consent Order against them, improper conduct and oppression by the Condo Corp through its Board, and prejudice. These issues arise from the same subject matter of the injunction, namely, prohibition of the use of the Owners’ Condo as STR. Some or all of these opposing grounds and claims of the Owners in the Injunction Action raise equitable issues of clean hands, the mandate to do equity, unlawfulness, illegal purpose, oppression and harshness.

[60] Therefore, to properly delineate and determine the issues, facts, circumstances, and equities of the parties in the Injunction Action, the issues and claims raised in the Owners’ Response Affidavit must be considered. The Owners are not required to bring their grounds and claims for opposing the Injunction Action as a cross-suit. It is sufficient that the Owners raise their grounds and claims through the only means afforded them under the *Rules*, which is their Response Affidavit: *Allard*, paras 10 and 12. Equity takes a holistic view of the positions of all the parties: *Communications, Energy and Paperworkers*, para 5.

[61] I disagree with the Respondents’ argument that there is no dispute regarding the applicability of section 59 of the Bylaw on Commercial-Use, and therefore, this issue should be determined by Originating Application. While the validity of section 59 is uncontested, I find that the conduct of the Condo Corp through its Board regarding the use of section 59 to prohibit STR is in issue and engages the section 67 CPA allegations raised by the Owners.

[62] Further, the commercial use restriction in section 59 of the Bylaw requires prior written consent of the Board and engages, among other things, the Owners’ opposing grounds and claims in section 67 of the CPA and the Disputed Facts of improper conduct, extreme animosity,

harassment, unfair prejudice, unreasonable and extensive monitoring, by the Condo Corp Board against the Owners.

[63] Furthermore, to the extent the Condo Corp is seeking the same remedies of permanent injunction to run with the Owner's land in enforcing section 59 of the Bylaw, the equities of the parties and a holistic view of the circumstances are also engaged.

[64] I disagree with the Respondents that there is no legal impediment to its ability to choose its method of enforcing its claimed rights in the Injunction Action. The Court retains significant discretion under the *Rules* to direct the Injunction Action. This Court is not obligated to hear the Injunction Action summarily. The modified summary judgment principle applies to the Injunction Action.

[65] I find that it is not possible to fairly and justly resolve the Injunction Action on a summary basis, bearing in mind the particular circumstances of this case where the Originating Application itself raised and puts directly in issue the validity of the Amended Bylaw, enforceability of the Consent Order, the fines it has imposed for STR, the character of its community and nuisance created by STR, among other things.

[66] Given the lack of formal pleadings in the summary process, the Condo Corp has failed to properly delineate the issues to be determined by this Court in the Injunction Action. Because there is no formal discovery process, the Condo Corp controls the records and its affiants, and it chooses the nature and pace of disclosure. The Owners are limited to disclosure of information afforded through cross-examination of the Condo Corp's selected affiants and the undertakings the Condo Corp chooses to accept.

[67] I find that the Owners will be prejudiced by the summary process if the issues they raised in opposition to the permanent injunction are not considered, or if they are not afforded adequate opportunity to obtain evidence they require to put their best foot forward.

[68] I find that the underlying and emerging disputed issues in the Originating Application and in the Owners' Response Affidavit changed the character of the Injunction Action such that it should not continue by originating application. *Barr*, paras 1-2. These underlying and emerging disputed issues must be determined by the statement of claim process.

[69] The Respondents rely on the procedural history of the Injunction Action to argue that the material factual record required to decide the Injunction Action is complete and undisputed. I disagree. I do not have sufficient confidence in the state of the record. I accept the Owner's evidence that there is outstanding information material to the Injunction Action yet to be discovered from the Condo Corp and its agents who did not swear affidavits. I accept the Owners' evidence of inconsistencies in different versions of some records disclosed to them.

[70] I disagree with the Respondents' suggestion that the Owners should have brought further interlocutory application in the Injunction Action to seek further and better disclosure through undertaking responses and further questioning on undertakings. These suggestions defeat the objectives of the summary process and support the position that that a summary process is no longer appropriate for the Injunction Action.

[71] In these circumstances, the Owners did not consider it efficient or beneficial to question further potential witnesses under rule 3.13(2) or rule 6.8, hence this Cross-Application. I find the Respondents' suggestions neither efficient nor cost-effective for the parties and the Court.

[72] I find that full Part 5 Disclosure of records and information is warranted in this case to resolve, once and for all, all the underlying disputes including the Amended Bylaw validity, enforceability against the Owners as non-parties to the Consent Order, among other things. Litigation by instalment and in piecemeal on these same issues between the Condo Corp and each owner or groups of owners is contrary to the foundational rules of the *Rules* of this Court and the *Judicature Act*.

[73] I find that the Injunction Action is not capable of summary determination, and it is inappropriate for adjudication by originating application given the circumstances of this particular case. On a holistic view, I am satisfied that the Injunction Action requires a complete and nuanced findings of fact from a more complete evidentiary record with better capacity to resolve the fundamental underlying issues raised, including credibility assessments, in respect of the Condo Corp's amendment and enforcement of STR prohibitions in its Bylaw and its enforcement of Commercial-Use, the communications and representations made to the Owners in respect of STR at all material times, including prior to and at the time of purchase of their Condo and prior to entering into agreement with the Condo Corp by signing the Bylaw, among other things.

[74] The parties agree, and I find, that there is no statute or rule that mandates the Injunction Action to commence or continue by originating application.

[75] Based on the foregoing, on balance, I exercise my discretion to recast and convert the Injunction Action to continue as a full-fledged statement of claim action pursuant to rule 3.2(6): **Buckley**, para 14; **Barr**, paras 1-2.

[76] The Special Chambers hearing of the Injunction Action set for March 13, 2026, is vacated. The Orders scheduling the Injunction Action for a Special Chambers hearing are varied to this extent.

[77] If the Condo Corp wishes to continue its Injunction Action, I order the Originating Application to be converted to a Statement of Claim and the Injunction Action to be continued as statement of claim action under the *Rules*.

[78] If the Condo Corp wishes to continue its Injunction Action as a statement of claim action under the *Rules* as the Converted Injunction Action, the initial Procedural Order provided under Issue #2 shall apply.

## **V. Issue 2: Should the Injunction Action and the Claim Action be consolidated into a single Action?**

[79] The Respondents oppose the Owners' consolidation request. The Respondents argued, among other things, that the Injunction Action and the Claim Action are not interrelated, their parties, issues, and reliefs are different, and that it will cause delay and prejudice to the Condo Corp.

[80] I find that, having regard to all the circumstances, on balance, it is in the interests of justice that the Injunction Action and the Claim Action be consolidated. I exercise my discretion to consolidate the Injunction Action and the Claim Action.

### A. Applicable Law

[81] Rule 3.72 of the *Rules*, the *Judicature Act*, and caselaw govern consolidation of actions in Alberta.

[82] The Court may order one or more of the following, among other things, (a) that 2 or more claims or actions be consolidated; (d) that a claim be asserted as a counterclaim in another action: *Rules*, r 3.72(1).

[83] The Court may make such orders for any reason the Court considers appropriate, including, without limitation, that 2 or more claims or actions (a) have a common question of law or fact, or (b) arise out of the same transaction or occurrence or series of transactions or occurrences: *Rules*, r 3.72(2).

[84] Section 8 of the *Judicature Act* provides that the Court, in the exercise of its jurisdiction in every proceeding pending before it, ensures that “as far as possible all matters in controversy between the parties can be completely determined and all multiplicity of legal proceedings concerning those matters avoided.”

[85] The Alberta Court of Appeal, in a series of decisions, set out the objectives of consolidation and the proper approach to a consolidation application including in *Altex Energy v Meyer*, 2020 ABCA 368 paras 21-22 [*“Altex CA”*] citing *Alliance Pipeline Limited v Universal Enesco Inc*, 2007 ABCA 285 para 6; *Munro v Munro*, 2011 ABCA 279 at para 6, and *1177620 Alberta Ltd v Access Mortgage Fund Ltd*, 2016 ABCA 404 at para 17.

[86] Pursuant to the consolidation principle, the purpose of consolidation is to enhance the administration of justice. A Court must be able to conclude, having regard to all the circumstances, on balance, that it is in the interest of justice that the actions be consolidated: *Altex CA*, para 21.

[87] The content of enhancing the administration of justice includes assessing for (i) the possibility of inconsistent verdicts, (ii) the prospect of prejudice to the parties, and (iii) the impact of consolidation and non-consolidation, both at the pre-trial and trial stages, on scarce resources including administrative, judicial, and financial: *Altex CA*, para 21.

[88] The Court of Appeal adopted the non-exhaustive list of relevant factors to use for the assessment in *Mikiskew Cree First Nation v Canada*, 1998 ABQB 675 para 2 citing *Shah v. Bakken*, 1996 CanLII 2522 (BC SC) (the “*Mikisew* factors”). However, the law is clear that the *Mikisew* factors are not the only relevant factors, and they are not determinative in themselves: *Altex CA*, para 21.

[89] The *Mikisew* factors are:

- (a) whether there are common claims, disputes and relationships between the parties;
- (b) whether consolidation will save time and resources in pre-trial procedures;
- (c) whether time at trial will be reduced;
- (d) whether one party will be seriously prejudiced by having two trials together;
- (e) whether one action is at a more advanced stage than the other; and
- (f) whether consolidation will delay the trial of one action which will cause serious prejudice to one party.

[90] The consolidation principle mandates that each case be assessed on its own merits and the assessment should include not just the common claims, but the extent of the distinct claims between the parties. In every case, the focus must be on the overarching objective of the impact of consolidation on the administration of justice, which includes impact on the parties: *Altex CA*, para 21.

[91] The Court of Appeal confirmed that the Court may rely on the pleadings alone, where the extent of the commonality is clear on the face of the pleadings, such that it is relatively simple to determine the nature and extent of the common and distinct issues in each of the actions sought to be consolidated: *Altex CA*, para 22 citing *Northland Bank v Willson*, 2014 AR 181 at para 27.

[92] Ultimately, a consolidation order is discretionary: *Altex CA*, paras 20 and 32. The applicant bears the onus of showing that consolidation is appropriate: *Altex CA*, para 24.

[93] Situated in the context of injunctions, the Court will have regard to the legal test to be met. A permanent injunction amounts to a final adjudication of rights and may be made after a full determination of the issues: *Liu v Matrikon Inc.*, 2007 ABCA 310 para 26; *Plains Midstream*, para 39.

[94] To obtain a permanent injunction, a party is required to establish: (1) its legal rights; (2) that damages are an inadequate remedy; and (3) that there is no impediment to the court's discretion to grant an injunction: *Plains Midstream*, para 40; *1711811 Ontario Ltd. v. Buckley Insurance Brokers Ltd.*, 2014 ONCA 125 paras. 74-80; *Google Inc v. Equustek Solutions Inc.*, 2017 SCC 34 (CanLII), [2017] 1 SCR 824 para 66; *Katelnikoff v Irricana (Town)*, 2024 ABCA 205 paras 32-37.

[95] There is no "balancing of convenience" in a permanent injunction as would be applied to justify an interlocutory injunction at the time it is sought: *Law Society of Alberta v. Beaver*, 2021 ABCA 163 para 35.

[96] This Court has jurisdiction and discretion to grant or deny injunctions pursuant to a statute and under common law: *Law Society of Alberta*, para 36.

[97] I now turn to the facts of this case.

## **B. Application of the Law to the Facts**

[98] The Respondents argued that the consolidation application is strategic and used for delay. The Respondents also argued that without conversion of the Originating Application to a statement of claim, there is no practical method to consolidate the Injunction Action and the Claim Action, therefore, the Cross-Application should be refused on this basis alone. I disagree.

[99] As stated above, the Court has an assortment of procedural tools under the *Rules* to direct an originating application action to effect a consolidation of actions where the requirements of administration of justice are met.

[100] In this issue #2, I adopt, repeat, and apply my analysis and findings in issue #1. Additionally, based on my analysis of the pleadings, the evidentiary record for the Cross Application, my inferences therefrom, and the written and oral submissions of the parties I further find as follows.

[101] Pursuant to the consolidation principle, I organize the following headings using the factors under the overarching objective of the impact of consolidation on the administration of justice, which includes impact on the parties, the *Mikisew* factors, and the factors in rule 3.72(2).

**1. Whether there are common claims, question of law or fact, disputes and relationships between the parties**

[102] This question includes the consideration of the extent of the distinct claims between the parties and whether the two Actions arise out of the same transaction or occurrence or series of transactions or occurrences.

[103] I disagree with the Respondents that there is only narrow overlap between the claims and disputes in the two Actions and that the overlapping issues are primarily legal.

[104] As per my findings in Issue #1 above, I disagree with the Respondents' narrow characterization of the claims and disputes in the Injunction Action and their written submissions that the Injunction Action has a "narrow legal issue" (paragraphs 4, 37 to 41, 44 and 47(a)).

[105] In their oral submissions, the Respondents changed their position and agreed that the issues in the Injunction Action are broader than their written assertions. While the Respondents agreed that the Injunction Action includes the issues of Bylaw amendment, enforceability, and the conduct of the Condo Corp through its Board, they maintained that the material facts on these issues are not disputed.

[106] Considering my findings in issue #1 and the Respondents' own list of "Disputed Facts" on these issues, I disagree that Bylaw validity is only a legal issue and that the material facts required for the Injunction Action are undisputed.

[107] I find that the Owners' claims in the Claim Action are part of their opposition of the STR permanent injunction against their Condo in the Injunction Action. The Owners raised those claims in their Response Affidavit and attached their Statement of Claim as Exhibit "P". The Response Affidavit is the only mechanism the *Rules* afforded the Respondents to respond to the Injunction Action: *Allard*, paras 10 and 12.

[108] As the law states, equity involves contextual analysis and takes a holistic view of the positions of all the parties: *Communications*, para 5.

[109] In *Plains Midstream*, involving a cross-application to consolidate an originating application into a statement of claim action (main action), Plains argued that the wider context of the parties' dispute in the main action was irrelevant to, and had no bearing on, Plains' enforcement right in the originating application.

[110] Jones, J. held that equitable remedies like injunctions are heavily context-dependent and the wider context of the dispute must be considered: paras 23 and 26. Justice Jones found that the originating application was inextricably tied to the main action and "[w]ithout that context, the relief requested makes no sense ... It would be a farce to ignore the broader context and enforce an otherwise-pointless injunction": para 27 and 29.

[111] To meet the elements of the legal test for permanent injunction, the Condo Corp will have to establish its right to enforce the Amended Bylaw including validity, enforceability against the Owners through the Consent Order, enforceability of STR prohibition through Commercial-Use, inadequacy of monetary remedies including fines, among other things. None of these can be determined in a contextual vacuum.

[112] At a minimum, the element of whether there is no impediment to the Court's discretion to grant a permanent injunction engages the Owners' allegations under section 67 of the CPA, including improper conduct and oppression arising from the same issues of the Amended Bylaw validity, enforceability against the Owners by virtue of the Consent Order, enforceability of STR prohibition through Commercial-Use, any valid representations to the Owners regarding STR, the Fining Scheme, among other things.

[113] I find that the Injunction Action and the Claim Action have common claims, question of law, facts, and disputes. The factual foundations required to determine the two Actions are the same series of events and are inextricable. These include the history of STR; the commencement, progression, and registration of the Amended Bylaw; the history of enforcement and permission of STR including through the Bylaw Commercial-Use provision; the facts surrounding the Consent Order; the alleged conduct and adverse motivations of individual Board members; and the alleged Board's enforcement measures claimed to be specifically directed at the Owners, among other things.

[114] I repeat the paragraphs in issue #1 above summarizing the parties' respective pleadings in the Injunction Action. The central issue in both Actions is the ability of the Owners to use their Condo for STR. The Injunction Action seeks to enforce the Bylaw restraining and prohibiting the Owners "from operating their unit in Mountains Reach for a commercial purpose and/or as a short-term rental." The Claim Action seeks declarations that the Bylaw is invalid and of no force and effect, and that the associated Consent Order is unenforceable as against the Owners. The Claim Action also seeks an injunction to prohibit the Condo Corp from enforcement of STR prohibition until the Bylaw is lawfully amended and related directions from the Court.

[115] I find that the above remedies sought in the two separate Actions, the facts pleaded in support of these remedies and the applicable laws, are two sides of the same coin. They engage the rights and duties of the Condo Corp and the Owners under the CPA and applicable common law in respect of STR prohibition.

[116] I now turn to the distinct claims in the two Actions. I agree with the Respondents that the Claim Action is broader in scope. The Claim Action added the individual Board members as Defendants and claims common law duties and remedies against the Condo Corp and its individual Board members personally. They are interference with economic relations, tortious conspiracy, negligence, nuisance, and general and punitive damages.

[117] I find that the common law duties and remedies in the Claim Action all arose from the same facts, transaction, or occurrence, or the same series of facts, transaction, or occurrence of the Amended Bylaw validity, enforceability against the Owners by virtue of the Consent Order, enforceability of the Commercial-Use provision, the Fining Scheme, among other things.

[118] While the Respondents argued in their written submissions that the CPA defines the rights and duties of the parties, the Originating Application pleaded nuisance against the Owners in the Injunction Action pursuant to the Bylaw – an "agreement that all unit owners enter into when purchasing a unit in Mountains Reach": Originating Application, para 26.

[119] While the damages remedy in the Claim Action is not in the Injunction Action, the Injunction Action does not completely ignore the issue of damages. The Condo Corp will have to establish that the harm it alleges is not compensable in damages. The Originating Application (paras 17-29) and its supporting affidavits (e.g. Haslett para 7, Stephens 2004 paras 35-65)

provide the residents' purposes of buying into, and the value of keeping, the Mountains Reach community's character including appreciation of investments. The damages in the Claim Action includes loss of market value equity for the Owners' Condo, lost rental income from STR, and improper fines from STR prohibition.

[120] I find that the Injunction Action is wholly encompassed in the Claim Action. All of the factual and legal matters in issue in the Injunction Action are also in issues in the Claim Action: *Bakker (Legal Guardian & Trustee of) v Van Santen*, 2003 ABQB 804 para 16.

[121] I agree with the Respondents that the Claim Action has extra Defendants, being the individual Condo Corp Board members. However, the Condo Corp acts through its Board members and the conducts of the Board members are in issue in both Actions.

[122] The Owners' Statement of Claim states that it added the individual Board members as Defendants because "[i]t would prejudice other Mountains Reach owners to impose a remedy solely against the Corporation for the improper conduct attributable to the Individual Defendants": para 69.

[123] The individual Defendants in the Claim Action are the key players and witnesses whose conducts are in issue in the Injunction Action. They are the current or former Board members of the Condo Corp. They are affiants who provided evidence in support of the Originating Application in the Injunction Action including for the alleged nuisance. The evidence of the individual Board member as witnesses in the Injunction Action will be part of their evidence as Defendants in the Claim Action.

[124] I do not find persuasive the Respondents' argument regarding the unnamed "John Doe" Defendant in the Claim Action. The Owners indicate, and I accept, that they anticipate questioning additional persons in the Part 5 questioning to determine whether there are additional individual Board members involved in the same series of transactions they allege to be improper conduct and oppression. Adding, removing, or substituting parties is a procedural step that can be addressed through a procedural order. This factor is neutral to consolidation.

[125] Further, there is no requirement under rule 3.72 or common law that the two Actions must have common parties or that all issues in the two Actions must be common: *Bakker*, para 19. In *Acess Mortgage*, the Alberta Court of Appeal held that three foreclosure actions, which had three different Mortgagees, had common question of fact and law, concern the same series of events, and will involve the same witnesses: paras 20-22. The three foreclosure actions were consolidated and the order severing the counterclaim was vacated: para 25.

[126] Similarly, in *B & S Publications*, three foreclosure actions involved some of the same parties, arose from the same series of transactions, and had common questions of fact and law. It was held that separate trials would result in duplication of process and the same witnesses testifying in all, while raising the possibility of inconsistent verdicts.

[127] On balance, I find a heavy overlap in the factual and legal foundations of the Injunction Action and the Claim Action. The Injunction Action is wholly encompassed in the Claim Action. The two Actions have common claims, question of law, facts, disputes and similar parties. The same factual matrix and series of transactions and occurrences gave rise to the claims and defences in both Actions and they are inextricably connected. Much of the same evidence and legal arguments would be used in both Actions. The same parties in the Claim Action are key witnesses in the Injunction Action.

[128] This factor weighs in favor of consolidation.

**2. The impact of consolidation and non-consolidation, both at the pre-trial and trial stages, on scarce resources including administrative, judicial, and financial**

[129] This question includes the consideration of whether consolidation will save time and resources in pre-trial procedures, and whether time at trial will be reduced.

[130] **Pretrial Procedures.** I disagree with the Respondents that it is unlikely that consolidation will save time and resources in pretrial procedures. They argued that consolidation would likely increase, rather than reduce, costs. The Respondents anticipate additional questioning, further document production relating to damages, and additional procedural steps including mandatory resolution efforts and potential interlocutory applications.

[131] However, Respondents did not address the situation where these same steps will be duplicated in the two Actions continuing separately, especially considering their own suggestion that the Owners should have sought leave of the Court to conduct further undertaking responses and further questioning in the Injunction Action.

[132] There is certainty of duplication of processes and waste of resources if the two Actions are not consolidated. Based on my findings above, a fulsome disclosure process is needed for the Injunction Action to be fair and just. The same procedural steps will have to occur in each separate Action. The same witnesses will provide written and oral evidence as required in both Actions with the possibility of inconsistencies. This is contrary to the *Judicature Act*, section 8 and common law. “Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided”: *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 18.

[133] I find that consolidation will allow the disclosure so far done in the Injunction Action to be imported into the disclosure process in the Claim Action. I agree with the Owners that consolidation will save time and resources by ensuring that the common evidence needed in both Actions only need be produced, discovered and presented once instead of twice.

[134] While some of the legal costs incurred for the Injunction Action would be sunk, such as for interlocutory applications, the work done on the merits of the Injunction Action will not be lost given that the Injunction Action is a large portion of the Claim Action. In my view, all that work already done will assist in focusing a consolidated action to what is outstanding.

[135] I find that even if consolidation does not save costs, it is unlikely to increase costs more than the duplicated processes in two separate Actions would.

[136] This factor weighs in favor of consolidation.

[137] **Trial Time.** I do not find persuasive the Respondents’ argument that if the injunction is heard first in Special Chambers and granted, the issue of Bylaw validity would be severed from the Claim Action, narrow the issues in the Claim Action, and reduce trial time in that Action.

[138] The Respondents neither considered nor argued whether issue estoppel would apply to permit such severance given that the parties in the two Actions are not identical. The Respondents also did not address the opposite of their argument, which is if the injunction is unable to be determined in Special Chambers or if it is denied.

[139] The Owners argued that the time required at trial would not change, as the Injunction Action is wholly encompassed in the Claim Action.

[140] Given my finding that the Injunction Action needs to continue as a statement of claim action (the Converted Injunction Action), I find that even if a single trial may not be significantly shorter than two separate trials, I am satisfied that one trial would likely use less party, judicial, and court resources than two trials separately in the Injunction Action and in the Claim Action.

[141] This factor weighs in favor of consolidation.

### **3. The possibility of inconsistent verdicts**

[142] The Respondents argued that there is no significant risk of inconsistent verdicts because if the Injunction Action is heard first in Special Chambers and granted, the Owners can simply amend the Claim Action to remove that entire overlapping portion already determined in the Injunction Action.

[143] As stated above, the Respondents made no submissions on the applicability of estoppel in the Claim Action. Issue estoppel requires three preconditions including that the parties to the decision or their privies are to be the same in both proceedings. Further, even if all the preconditions are met, the Court must still determine, as a matter of discretion, whether issue estoppel ought to be applied: *Danyluk*, para 25.

[144] The mutuality requirement has not been argued, and the Court’s discretion is a factor. It is uncertain whether findings made in the Injunction Action will be binding, at least on the individual Defendants, in the Claim Action. The risk of inconsistent factual findings and verdicts exists in such circumstances of uncertainty.

[145] In *Axcess Mortgage*, the Alberta Court of Appeal held that if the three foreclosure actions were to proceed to trial separately, the trial courts might reach different conclusions about the agreement allegedly entered for the Mortgagees and the Mortgagor. Issue estoppel would not apply to prevent this because the parties in the separate actions are different: para 23.

[146] As stated in *Bakker*, “[i]f consolidation is not ordered, there is the risk of the “awkward, unenviable and untenable position of potentially deciding differently on the same facts, or on expanded facts that were unavailable to the first trial judge””: para 25.

[147] Avoiding the possibility of inconsistent findings is a clear legislated objective in section 8 of the *Judicature Act* and a factor in enhancing the administration of justice objective. Inconsistent verdicts would bring the administration of justice into disrepute.

[148] This factor weighs in favour of consolidation.

### **4. Whether one party will be seriously prejudiced by having two trials together**

[149] This question includes the consideration of whether one action is at a more advanced stage than the other, and whether consolidation would delay the trial of one action and cause serious prejudice to one party.

[150] **Whether one Action is more advanced.** I agree with the Respondents that the Injunction Action is ready for the Special Chambers hearing scheduled for March 13, 2026, whereas the Claim Action has completed the pleadings stage and disclosure has not commenced. The Owners submitted that they have been ready to proceed with exchange of Affidavit of Records but

decided to wait for the outcome of this Cross-Application given the potential duplication and inefficiency it might occasion.

[151] The need for Part 5 disclosure in the Injunction Action will necessarily cause a loss of the Special Chambers hearing date. This is not attributable to consolidation of the two Actions. However, the parties' scheduled time for that hearing can be efficiently redeployed to another procedural step in a consolidated Action, and the limited public resources (Court and judicial) can be efficiently reallocated to resolve a consolidated Action. This factor is neutral to consolidation.

[152] Given the need for a fulsome disclosure process in the Injunction Action, the delay consolidation may cause the Injunction Action is unlikely to be significant. The need for disclosure brings the Injunction Action closer to the current stage as the Claim Action.

[153] I disagree with the Respondents that the Court views delay as an overarching factor. As stated above, the consolidation principle sets out the overarching objective the Court applies in assessing each case on its own merit.

[154] In *B & S Publications*, the key issue on appeal was that consolidation unfairly retarded the progress of the first lawsuit. Despite the delay, the Court of Appeal upheld the consolidation stating that "[s]eparate trials, in our view, would result in the duplication of process in that it is likely that the same witnesses would testify. The spectre of inconsistent verdicts in these circumstances ought to be avoided": para 5.

[155] In *Bakker*, pleadings in the second action had not closed. It was held that the delay of the first action was relevant but not determinative considering the close similarity between the issues in the two actions: para 41 citing *Ellis-Don Management Services v. Rae-Dawn Construction Limited (1992)*, 1992 ABCA 261 at 191-192; and *Galloway v. Entwistle*, [1998] A.J. No. 278 at 23-36.

[156] The cases cited by the Respondents are distinguishable on their particular facts and the nature of the issues before the Court. I find different facts and considerations in this case and therefore distinguish on that basis *Frydman v Pelletier*, 2013 ABQB 225, *MTS Allstream Inc. v Telus Communications Company*, 2009 ABQB 598, and *Questor Technology Inc v Stagg*, 2024 ABKB 377.

[157] While delay is usually associated with inefficiency, that is not so in this case. I find that any delay to the Injunction Action attributable to consolidation will be offset by the savings from duplicative processes in two parallel Actions and other factors that enhance the administration of justice including risk of inconsistent findings and results.

[158] This factor is neutral to consolidation.

[159] **Serious Prejudice to a Party**. The Respondents submitted that the Condo Corp will suffer prejudice by the delay of up to two years to determine the validity and enforceability of the STR Amended Bylaw, Commercial-Use provision and the injunction. There is no evidence of prejudice to the Respondents caused by any potential delay from consolidation of the two Actions.

[160] First, given the need for full disclosure in the Injunction Action, I find that any potential delay caused by consolidation will not be significant and will not cause serious prejudice to the Condo Corp in these circumstances.

[161] Second, considering the significant contention regarding the Amended Bylaw validity, the Consent Order, and the originating application summary process, I find that the Condo Corp and its residents would benefit from the full adjudication of these issues on the merits once and for all, rather than piecemeal litigation. It is uncertain that determining the Injunction Action summarily in a Special Chambers hearing will end the litigation between the Owners and all the Respondents. The alleged prejudice from consolidation has not been made out.

[162] The Respondents also argued that the Condo Corp and its residents would likely be waiting at least two years to determine the “inconveniences to the Condo Corp and its residents of STRs” such as excessive noise, late-night parties, and garbage.

[163] The Owners submitted that the evidentiary record does not establish that the community disturbances are attributable to the Owners. The Originating Application itself and its supporting evidence state that the Amended Bylaw and associated Consent Order permitted certain owners in the same community to continue STR in their condos. The alleged prejudice of continued community inconveniences caused by consolidation delay has not been made out.

[164] The Respondents also cited *Kuzio* for damage to the special rule of law in a condominium community by openly flouting its by-laws for personal benefit. The circumstances are not the same for this Condo Corp, which must first establish the validity and enforceability of the Bylaw it seeks to enforce. Therefore, it is a live issue in both Actions whether any Bylaw is being flouted.

[165] Further, consolidation avoids the risk of prejudice to the individual Respondents as key witnesses in the Injunction Action. They testify as witnesses about events where their own personal liabilities are in issue in the Claim Action.

[166] On the other hand, I agree with the Owners that without consolidation they face the prejudice of limitation in their use of evidence from one Action in another and duplicative processes, among other things. They submitted that this is procedurally unfair and highly prejudicial to the Owners.

[167] I find that consolidation will remove any barriers to the use of the same evidence required in both Actions, potential interlocutory applications for leave, and ameliorate any potential prejudice to both parties.

[168] This factor weighs in favour of consolidation.

## **5. Conclusion**

[169] I have weighed all these factors together with no factor determinative by itself and assessed the circumstances of this case on its own merits with a focus on the impact of consolidation on the parties and on the administration of justice.

[170] I find that a majority of the factors weighed in favor of consolidation. The other factors are neutral to consolidation. I did not find any factor that significantly weighed against consolidation in this case.

[171] Based on the foregoing, considering that the purpose of consolidation is to enhance the administration of justice, I am confident, having regard to all the circumstances, on balance, that it is in the interests of justice that the Injunction Action and the Claim Action be consolidated. I exercise my discretion to consolidate the Injunction Action and the Claim Action.

[172] Applying the consolidation principle to enhance the administration of justice, the goal for this litigation is to move the consolidated action to trial as quickly as possible. Therefore, a procedural plan that would achieve this goal is necessary.

[173] The parties are directed to move forward expeditiously and to continue the momentum of the Injunction Action.

[174] Accordingly, the following initial procedural Order shall apply if the Condo Corp wishes to continue its Injunction Action as the Converted Injunction Action.

- (a) The Converted Injunction Action and the Claim Action shall be consolidated and continued as Action No. 2401-07482 (the “Consolidated Action”).
- (b) The Consolidated Action is a statement of claim action and all the rules applicable to a statement of claim action under the *Rules*, including Part 5 Disclosure, shall apply to the Consolidated Action.
- (c) The Condo Corp shall be Plaintiff and Defendant by Counterclaim. The Owners shall be Defendants and Plaintiffs by Counterclaim. The individual Board members shall be Defendants by Counterclaim.
- (d) Within 20 days of these Reasons, the Condo Corp shall file and serve a Statement of Claim in the Consolidated Action to reflect its new status as Plaintiff and Defendant by Counterclaim, its clearly pleaded facts, the specific reliefs it seeks, and further particulars if any. The Statement of Claim shall contain an opening paragraph stating that the Statement of Claim is deemed to be filed on May 29, 2024 when the Originating Application was filed and that it continues the Consolidated Action pursuant to the Consolidation Order pronounced on the date of these Reasons.
- (e) Within 20 days of service of the Statement of Claim, the Owners shall file and serve their Statement of Defence and their Counterclaim. The Owners’ Counterclaim shall reflect their new status as Plaintiff by Counterclaim, their clearly pleaded facts, the specific reliefs they seek, and further particulars if any. The Counterclaim shall contain an opening paragraph stating that the Counterclaim is deemed to be filed on February 6, 2025 when the Owners’ Statement of Claim was filed and that it continues the Consolidated Action pursuant to the Consolidation Order pronounced on the date of these Reasons.
- (f) Within 20 days of service of the Owners’ Defence and Counterclaim, the Condo Corp shall file and serve their Reply, and Defence to Counterclaim, if any.
- (g) Within 20 days of service of the Owners’ Counterclaim, each of the individual Defendants shall file and serve their Defence to Counterclaim, if any.
- (h) Within 20 days of service of the Defences to Counterclaim, the Owners shall file their Reply, if any.
- (i) Within 30 days of the close of pleadings, the Condo Corp shall serve on all other parties a draft Litigation Plan, pursuant to Notice to the Profession and Public #2024-02, for the purpose of setting a trial date for the entire Consolidated Action. The draft Litigation Plan shall not follow the suggested timelines in the court template; it shall be modified to achieve the objective of this Order to move

the Consolidated Action to trial as quickly as possible. The parties shall be obligated to swear and serve Affidavits of Records in the Consolidated Action. All the disclosure in the Originating Application process shall be imported into the Affidavits of Records in the Consolidated Action. The parties shall be entitled to conduct Part 5 questioning. All transcripts of cross-examination in the Originating Application process shall be imported into the Consolidated Action and shall be treated as Part 5 questioning transcripts despite that they have been filed on the court's record. Further part 5 questioning shall be focused on outstanding information for the entire Consolidated Action. The proposed timelines for these procedural steps shall be included in modified draft Litigation Plan.

- (j) The parties shall work together to achieve a finalized Litigation Plan to facilitate court appearance for setting a trial date. The parties shall have up to 45 days from date of service of the draft Litigation Plan to work together, agree, or disagree on a finalized Litigation Plan. Any party that disagrees with any procedural step or timeline shall document their reasons, alternative proposals, and support for same.
- (k) Upon the expiry of the 45 days from date of service of the draft Litigation Plan, the Condo Corp is directed to use the appropriate court procedure to schedule appearance at the next available Civil Appearance Court to have a trial date set for the Consolidated Action. The Condo Corp shall use the latest draft Litigation plan agreed upon by the parties and the Condo Corp's proposal for any procedural steps or timelines not agreed upon by the parties. All the parties shall be entitled to all the rights afforded to parties in the Civil Appearance Court process for setting trial date including filing responses and making submissions in court.
- (l) If the Condo Corp becomes unable to perform the tasks set out in paragraphs (i) to (k) above in relation to the Litigation Plan for the purpose of setting a trial date for the entire Consolidated Action, the Owners are directed to perform the tasks for Litigation Plan in this Order.
- (m) The parties may amend any of the above procedural steps and timelines in paragraphs (d) to (k) by written agreement in the form of a Consent Order, or by further pronounced Order of the Court.

**VI. Issue 3: Alternatively, should: (i) Part 5 Disclosure be applied to the Injunction Action, (ii) evidence from the Cross Application be used in both Actions, and (iii) the Owners be permitted to file a further cross-application?**

[175] The Owners seek alternative remedies under rule 3.12 that the procedures applicable to statement of claim actions, including Part 5 discovery, apply to the Injunction Action and that the materials filed in support of the cross-application be used in both Actions.

[176] Further, the Owners seek an order under rule 3.10 directing that Part 5 discovery apply to the Injunction Action and leave for the Owners to file a further cross-application in the Injunction Action.

### **A. Applicable Law**

[177] Upon application at any time in an originating application action, the Court may direct that all or any rules applying to statement of claim action apply to the originating application action: *Rules*, r 3.12.

[178] Sometimes proceedings commenced by originating application turn out to be too complex for that process, and a full conversion to a statement of claim action under rule 3.2(6) may not be desirable or required to achieve a specific purpose. Rule 3.12 may be engaged to apply statement of claim rules to an originating application action: *Chandos Construction Ltd v Deloitte Restructuring Inc*, 2024 ABCA 403 para 27.

[179] For example, if pleading is required in an originating application action to define the issues to be pleaded and decided or to add further particulars, rule 3.12 may be used to require the applicant in the originating application action to file a document called “statement of the claim”, or “statement of the plaintiff’s claim”, or “statement of the applicant’s claim”, as a supplemental pleading to those found in the originating application, which is the commencement document: *Chandos*, para 27 citing *Singh v Kaler*, 2017 ABCA 275 at paras. 66-69, 56 Alta LR (6th) 256.

[180] In *A.J.G. v Alberta*, 2006 ABQB 446 at para. 3, 402 AR 340, it was held that the claimant could file a “Statement of the Claim” within the Originating Notice action, setting out the allegations in greater detail, as an alternative to filing particulars.

[181] The “statement of the applicant’s claim” is not a new commencement document. It is not a statement of claim, does not start a new proceeding, or lead to a new action. The document uses the action number of the existing action commenced by originating application: *Singh*, para 67 citing *Alberta Civil Procedure Handbook 2017* (Stevenson & Côté (Edmonton: Juriliber, 2017) 3-21 and *Canadian Gulf Oil Co v Crown Trust Co*, 1954 CanLII 530 (AB CA).

[182] I now turn to the facts of this case.

### **B. Application of the Law to the Facts**

[183] Given my findings, conclusions and remedies granted in issues #1 and #2, I need not decide issue #3.

## **VII. Disposition**

[184] The Cross-Application is granted. I vary paragraph 1 of the Order of the Honourable Justice Malik issued and filed April 24, 2025 and paragraph 2 of the Order of the Honourable Justice Malik issued May 30, 2025 and filed June 2, 2025. The Special Chambers hearing scheduled for the Injunction Action shall be vacated.

[185] If the Condo Corp wishes to continue its Injunction Action, I order the Originating Application to be converted to a Statement of Claim and the Injunction Action to be continued as statement of claim action under the *Rules*.

[186] Having regard to all the circumstances, on balance, it is in the interests of justice that the Converted Injunction Action and the Claim Action be consolidated. I exercise my discretion and consolidate the Converted Injunction Action and the Claim Action to continue as a single statement of claim action under Action No. 2401-07482.

[187] If the Condo Corp wishes to continue its Injunction Action as the Converted Injunction Action, the initial Procedural Order provided under Issue #2 shall apply.

[188] If the parties cannot agree on costs, they may make written submissions of no more than 3 pages (excluding authorities), the Owners within 30 days, and the Respondents within 60 days, of the date of these Reasons.

Heard on the 6<sup>th</sup> day of February 2026.

**Dated** at the City of Calgary, Alberta this 2<sup>nd</sup> day of March 2026.

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**C.B. Thompson**  
**J.C.K.B.A.**

**Appearances:**

Timothy Chan, Michael Loberg and Anna Gagnon, Student-at-Law  
for the Cross Applicants

Ram Sankaran and Reem Saraya  
for the Respondents

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**Corrigendum of the Reasons for Decision  
of  
The Honourable Justice C.B. Thompson**

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Para 49(d), Condo Corp's, line 1 and line 3

Para 49(f), Condo Corp's, line 1

Para 57(c), Condo Corp's, line 2

Para 164, Condo Corp, line 3

**Appearances:**

Timothy Chan, Michael Loberg and Anna Gagnon, Student-at-Law  
for the Cross Applicants