IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Richardson v. The Owners, Strata Plan VR 2083,* 2024 BCSC 1910

Date: 20240827
Docket: L200094
Registry: Vancouver

2024 BCSC 1910 (CanLII)

Between:

Beverly Richardson and John Richardson

Applicants

And

The Owners, Strata Plan VR 2083 and Daniel Simmons

Respondents

Before: The Honourable Justice Veenstra

Oral Reasons for Judgment

In Chambers

Counsel for the Applicants:	J.W. Lebbert
Counsel for the Respondent, The Owners, Strata Plan VR 2083:	M. Holmes V. Thieu, Articled Student
No other appearances	
Place and Dates of Hearing:	Vancouver, B.C. August 26-27, 2024
Place and Date of Judgment:	Vancouver, B.C. August 27, 2024

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[1] **THE COURT:** This is a proceeding commenced by requisition to enforce an order of the Civil Resolution Tribunal (the "CRT") made on March 2, 2020 (the "CRT Order"), in respect of a dispute arising under the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*]. The CRT Order was filed in this court on May 9, 2020, for purposes of enforcement, which commenced the present proceeding.

[2] The respondents, The Owners, Strata Plan VR 2083 (the "Strata Corporation"), relates to a complex consisting of 30 townhouse-style strata lots located on Blackcomb Way in Whistler, British Columbia. The underlying dispute relates to certain alterations made to a unit owned at the time by the respondent Mr. Simmons. The applicants (the "Richardsons") were the owners of an adjacent strata lot.

[3] Pursuant to the CRT Order, the Strata Corporation was required to call a special general meeting ("SGM") to consider two specific resolutions with respect to the alterations that had been made. The Richardsons say that, although the Strata Corporation held an SGM on June 17, 2020, it did not properly comply with the CRT Order with respect to that SGM.

[4] In August 2020, the Richardsons applied to the CRT seeking orders that the results of the special general meeting be reversed. In a decision issued April 26, 2021, the CRT declined to consider the matter, ruling:

> 30. Given that a final decision was issued, I find that under the principle of *functus officio,* the CRT may not make any further orders about how the ordered SGM should have been conducted, how the voting was carried out, or the content of the resolutions to be voted on. To do so would effectively be an alteration of the original March 2, 2020 order, which would be revisiting a matter already decided, contrary to the principle of *functus officio.*
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> 31. I also find that the essential nature of the Richardsons' requested remedies are about enforcement of the March 2, 2020 CRT order, which the CRT does not have authority to do.
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> 32. As previously stated, the Richardsons' claims in this dispute are that the strata was significantly unfair and violated the SPA in the way it worded the resolution and conducted the voting at the June 2020 SGM. These were actions the strata took as part of its compliance with the March 2,

2020 CRT orders. So, I find that the Richardsons' claims are essentially about enforcement of these CRT orders.

33. The CRT does not have authority to enforce its own orders. If a disagreement arises between parties about whether or how one party complies with a CRT order, that matter can only be decided by the courts. Specifically, CRTA section 57(1) says a final decision of the CRT in relation to a claim category other than a CRT small claims dispute may be enforced by filing in BC Supreme Court (BCSC).

34. The orders to hold the June 2020 SGM and vote on the resolution about approving the unit 16 renovations were made in the final decision on a CRT strata property dispute. So, I find that under CRTA section 57(1), only the BCSC may has jurisdiction over any questions about enforcement of or compliance with those orders.

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[5] The Richardsons commenced a judicial review proceeding in June 2021 with respect to the latter decision but have not pursued it.

[6] Rather, on January 16, 2023, the Richardsons filed a notice of application in this enforcement proceeding, seeking a variety of relief. An amended notice of application was filed on February 22, 2023 (the "ANOA"). The ANOA seeks various relief, including orders:

a) for document production;

b) compelling the Strata Corporation to comply with the CRT Order;

c) finding that the Strata Corporation has acted significantly unfairly in its implementation of the CRT Order; and

d) finding the Strata Corporation in contempt of court for its failure to follow the CRT Order.

[7] There were issues with effecting service on Mr. Simmons, who had sold his strata lot in late 2020. He was served in the second half of 2023.

[8] In February 2024, the Strata Corporation filed an application seeking orders striking out various portions of the ANOA, as well as portions of the affidavits tendered by the Richardsons. That application was amended on May 13, 2024, and was one of the matters before me today.

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[9] As well, in April 2024, the Richardsons filed their own application for leave to amend the ANOA as well as the affidavits, for production of certain documents, and for cross-examination of a witness. That application was also before me.

[10] In the course of submissions, I questioned whether there was a triable issue as to the Strata Corporation's compliance with at least one of the orders made and, in light of that, raised concerns about whether it was appropriate in the circumstances to proceed with a contempt application rather than resolving that issue. Upon consideration of my comments, the parties agreed to various orders that have the effect of striking out the contempt aspects of the ANOA, and instead focusing on the portions of the application that deal with enforcement of the orders and questions of unfairly prejudicial conduct. The parties also agreed on the striking of certain paragraphs from the affidavits.

[11] What remains for me to decide, in light of all that, are the applications for document production and for cross-examination.

Background

[12] The dispute has its genesis in various alterations made by Mr. Simmons to his strata lot in 2018 and 2019. The Richardsons, who own an adjoining strata lot, raised concerns with the strata council and, when not satisfied with the responses, initiated dispute resolution proceedings at the CRT in June 2019.

[13] Those proceedings led to a decision issued by Tribunal member Eric Regehr on March 2, 2020. His decision is indexed at 2020 BCCRT 241. The dispute was summarized at para. 2 as follows:

> 2. This dispute is about extensive renovations that Mr. Simmons made to his strata lot, which also involved common property. The applicants make 4 claims about these renovations. First, the applicants claim that Mr. Simmons breached section 70(4) of the *Strata Property Act* (SPA) by increasing the habitable area of his strata lot without a unanimous vote. Second, the applicants claim that Mr. Simmons significantly altered common property without obtaining a ¾ resolution, contrary to section 71 the SPA. Third, the applicants claim that Mr. Simmons breached the strata's bylaws by completing some of the renovations without proper strata approval. Finally, the applicants claim that it was significantly unfair

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> for the strata to approve the renovations. The applicants want the respondent to restore certain aspects of the renovations to their previous condition, or alternatively, seek appropriate approvals from the strata and the owners.

[14] The first issue related to the conversion of certain crawl space into a bedroom and a bathroom, which required excavation under the unit. With respect to this issue, the Tribunal member noted at para. 27 that:

> 27. Section 70(4) of the SPA says that an owner must not increase the habitable area of a strata lot by making a nonhabitable area habitable unless they seek an amendment to the Schedule of Unit Entitlement and obtain a unanimous vote of the owners, in accordance with section 261 if the SPA.

[15] After considering the various evidence submitted by the parties, the Tribunal member concluded:

> 39. I therefore find that by converting the crawlspace into a bedroom and bathroom, Mr. Simmons converted a nonhabitable area into a habitable area within the meaning of section 70(4) of the SPA. Mr. Simmons breached section 70(4) of the SPA by doing so without obtaining a unanimous vote approving the change and amending the Schedule of Unit Entitlement.
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> 40. Mr. Simmons says that other strata lots, including unit 17, have done similar conversions. The applicants do not dispute this, and the vacation rental listing for unit 17 appears to show a windowless bedroom that could be a converted crawlspace. However, I find that it does not matter whether any other owners have also breached section 70(4) of the SPA, which is a mandatory provision.
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> 41. I also note that just because other owners have converted part of their crawlspaces into habitable area does not necessarily mean that they breached section 70(4) in doing so. Section 5.1(2) of the SPR sets out an exception to section 70(4) of the SPA for "minor changes" to the habitable part of a strata lot if the area is less than 10% of the total area of the strata lot and less than 20 square metres. If a conversion falls within these parameters, the owner only needs written permission from the strata council. According to the architectural drawings, the area of unit 16's crawlspace conversion is 23.24 square meters, so it does not fit within this exception. However, it is entirely possible that some or all of the other crawlspace conversions fall within this exception.
>
> 42. In terms of remedy, I find that Mr. Simmons should be given an opportunity to obtain the unanimous resolution he requires, including time to gather proxies since most owners do not reside at the strata. I find that there is no evidence of any urgency to resolve this issue, so I order the strata to call a special general meeting (SGM) between 90 and 120 days

of the date of this decision. The SGM must include a vote on the approval of the conversion of the crawlspace into a habitable area under section 261 of the SPA. I order the strata to hold the SGM within 30 days of calling it.

43. If the owners unanimously approve of the conversion, I order Mr. Simmons to amend the Schedule of Unit Entitlement pursuant to section 261 of the SPA at his expense.

44. If the owners do not unanimously approve of the conversion, I order Mr. Simmons to convert the area that was formerly a crawlspace into a nonhabitable area. I do not consider it reasonable or necessary to order Mr. Simmons to return the crawlspace to its former state, which may not even be possible. Rather, Mr. Simmons must ensure that it is not capable of being lived in, such as by raising its floor or lowering its ceiling. I decline to order the strata to bear the cost of making the crawlspace nonhabitable. Section 70(4) puts the obligation on the owner not to increase the habitable area of a strata lot.

45. This order will not apply if Mr. Simmons reduces the amount of habitable area in the crawlspace to fall within the parameters of section 5.1(2) of the SPR and receives written approval from the strata.

[Emphasis added]

[16] With respect to the question of whether the renovations had significantly altered common property, the Tribunal member noted at para. 46:

46. Section 71 says that the strata must not make a significant change in the use or appearance of common property unless the change is approved by a resolution passed by a ¾ vote at an annual general meeting (AGM) or SGM. Even though section 71 of the SPA refers only to the strata, both the BC Supreme Court and the tribunal have applied it to alterations made by owners: see *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 and *Farrell et al v. The Owners, Strata Plan K 414 et al*, 2018 BCCRT 369. I find that section 71 of the SPA applies to this dispute because the strata facilitated the changes by approving Mr. Simmons' renovation plans.

[17] After reviewing each aspect of the renovation said to have significantly altered common property, the Tribunal member commented at paras. 91-93:

91. In summary, based on the factors set out in Foley, I find that the only change to common property that is significant within the meaning of section 71 of the SPA is the addition of the side door and associated retaining wall and roof extension. I wish to emphasize that without the long pattern of other owners making significant changes to common property without proper strata approval, I would have found that all the impugned changes were significant, with the exception of the tree removals. This dispute turned on unusual facts.

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> 92. I order that at the SGM the strata must hold about the crawlspace conversion, the strata must also include a resolution to approve unit 16's side door, retaining wall and roof extension.
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> 93. If the resolution does not receive ¾ of the votes at the SGM, I order Mr. Simmons to remove the side door, retaining wall and roof extension. Section 71 places the obligation on the strata not to change common property, which the strata breached by improperly approving the installation of the side door without owner approval. For this reason, I find that it would be unfair to require Mr. Simmons to bear the cost of removing the side door, retaining wall and roof extension. If this work must be done, I order the strata to bear the cost.

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[18] The orders made were summarized at paras. 117-119 of the decision:

> 117. I order that:
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> a. The strata call an SGM between 90 and 120 days of this decision, to include:
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> i. A vote on a resolution under sections 70(4) and 261 of the SPA to approve the conversion of unit 16's crawlspace from a nonhabitable area to a habitable area, and
>
> ii. A vote on a resolution under section 71 of the SPA to approve unit 16's side door, retaining wall and roof extension.
>
> b. The strata hold the SGM within 30 days of calling it.
>
> c. If the owners unanimously approve of the crawlspace conversion, Mr. Simmons amend the Schedule of Unit Entitlement pursuant to section 261 of the SPA, at his expense.
>
> d. If the owners do not unanimously approve of the crawlspace conversion at the SGM, Mr. Simmons convert the area that is labelled a crawlspace on the strata plan into a nonhabitable area, at his expense.
>
> e. If Mr. Simmons reduces the amount of habitable area in the converted crawlspace to fall within the parameters of section 5.1(2) of the SPR and receives written approval from the strata, orders (a)(i), (c) and (d) will no longer apply.
>
> f. If the resolution to approve unit 16's side door, retaining wall and roof extension does not receive ¾ of the votes at the SGM, Mr. Simmons remove the side door, retaining wall and roof extension and return affected area to its pre-renovation condition within 150 days of the SGM, at the strata's expense.
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> g. Within 14 days of the date of this decision, the strata reimburse the applicants $112.50 in tribunal fees.
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> 118. I dismiss the applicants' remaining claims.

> 119. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.

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[19] Mr. Simmons did not agree with the Tribunal member's determination with respect to the crawl space area. He retained an architect who prepared a letter to the strata council stating that the area of the crawl space was less than the Tribunal member had concluded. The architect explained that the actual as-built area was 19.89 square metres and that this was within the 10% threshold that could be approved by strata council without need for a unanimous resolution of the strata members. With this information in hand, the strata council concluded that it could approve the crawl space alterations which it did, and that there was no reason to place this issue before the membership.

[20] The Strata Corporation called an SGM for June 17, 2020, to deal with the approval of the side door, retaining wall, and roof extension (collectively, the "Side Door Issue"). Due to the COVID-19 pandemic, the meeting was held entirely remotely by Zoom. All votes were to be cast by "restricted proxy".

[21] In 2020, the Strata Corporation had retained Wynford Group to provide certain specified management services, including the accounting services. Some strata management tasks were handled not by the Wynford Group but by strata council members. When it came to the organization of the SGM, the strata council arranged for Wynford Group to send out meeting notices and to collect proxies. Wynford Group set up a special email address to receive proxies and had conduct of that email address at all material times.

[22] When the meeting occurred, Wynford Group provided the chair with proxies completed by 28 of the 30 owners, of which 21 were in favour of the resolution approving the Side Door Issue, and seven were opposed. The chair declared that the 75% threshold had been met.

[23] The Richardsons subsequently learned that one of the two units whose votes had not been counted were the Maguires who owned Strata Lot 4, and who the

Richardsons had understood would oppose the resolution. Mr. Maguire has provided an affidavit indicating that he had sent multiple emails to Wynford Group with respect to sending in a proxy with a negative vote and had asked for confirmation that his proxy had been received and that there were no issues.

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[24] Hearsay evidence tendered by the Strata Corporation suggests that Ms. Benoit, the responsible Wynford Group employee, may have told a strata council member that Mr. Maguire's initial email had no attachment.

[25] There are other emails in evidence with respect to other members of the strata and their votes. The Richardsons submit that the court should draw an inference that strata council was working to ensure that all positive votes were counted, and treating positive voters differently from Mr. Maguire. The Strata Corporation suggests that the evidence does not justify any such inference being drawn.

[26] With respect to the crawl space issue, the Strata Corporation says that Mr. Simmons, by providing the letter from his architect, had "reduce[d] the amount of habitable area" and thus (on their interpretation) the CRT Order no longer required that issue to be put to a vote. The Richardsons, on the other hand, say that the findings of the Tribunal member were final and binding, that the “new” information from the architect was information available all along, that the word "reduces" requires an actual physical reduction, and that the changing of information was an invalid collateral attack on the CRT Order.

[27] Having reviewed the evidence, I am satisfied that there is a triable factual issue with respect to the validity of the vote relating to the Side Door Issue.

Document Production

[28] In that context, I must decide whether to order production of records sought by the Richardsons. The Richardsons seek production of:

a) All emails sent or received at any time by the email address that was set up to collect proxies for the June 2020 SGM; and

b) All emails sent or received by Wynford Group employees in respect of the June 2020 SGM.

[29] Production is sought on two grounds:

a) On the basis that the documents sought are producible pursuant to s. 35 of the *SPA* on the basis that they are "the results of any votes" at a general meeting or that they are "correspondence sent or received by the strata corporation and council"; and

b) Pursuant to Rule 22-1(4)(c), which permits the court to order discovery, inspection, or production of a document for purposes of a chambers proceeding.

[30] Counsel for the Richardsons had asked the Strata Corporation's counsel in March 2021 for copies of all correspondence to and from the Strata Corporation subsequent to the CRT Order, related to the CRT Order, the SGM, and the alterations to Strata Lot 10. A further letter in October 2022 specifically requested copies of all emails to or from Wynford Group employees, as well as to and from the specified SGM email address. The parties do not agree whether the March 2021 letter should have been understood as incorporating correspondence involving Wynford Group or just correspondence amongst strata council members.

[31] The Strata Corporation asserts the proxy forms are not part of the minutes of a meeting, so do not fall within s. 35(1)(a), and that correspondence is only required to be kept for two years. With respect to the first of these points, the Strata Corporation relies on *Hamilton v. The Owners, Strata Plan NWS 1018*, 2017 BCCRT 141 at para. 16. With respect to the second point, the Strata Corporation relies on s. 4.1 of the *Strata Property Regulation*, B.C. Reg. 43/2000. The Strata Corporation argues that Wynford Group has not been retained by the Strata Corporation for any

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purpose since December 31, 2021, and that it no longer has access to the records of the Wynford Group.

[32] More generally, the Strata Corporation asserts that the request for all of the Wynford Group's emails related to the SGM is in the nature of a fishing expedition, and that their records would likely hold little or no relevance.

[33] I am advised that Wynford Group was sent a copy of the Richardsons' notice of application seeking document production pursuant to Rule 22-1(4). That said, the Wynford Group was not specifically identified on the cover page of the notice of application as a party against whom relief is sought.

[34] I am satisfied that the request made for production of documents from the Wynford Group is a reasonable one and that the records will likely be of assistance in resolving the factual issues that arise with respect to the factual matters in dispute. I do not agree that this is in the nature of a fishing expedition. I view the categories for which production is sought as being carefully tied to either the SGM itself or to the email address that was, on the evidence, set up specifically for purposes of the SGM.

[35] While the *SPA* regulation only requires correspondence to be kept for a minimum of two years, that does not mean that the Wynford Group will no longer have the relevant documents. Presumably, the Wynford Group was aware of the Richardsons' ongoing request for document production, including that sought in its March 2021 correspondence.

[36] Given the arguments made with respect to the applicability of s. 35 of the *SPA*, and given that production is sought for purposes of this action, it is my view that it is appropriate for me to make this order under Rule 22-1(4)(c). The documents sought are material to the factual issues that will have to be resolved and there is little prejudice to the Strata Corporation or to the Wynford Group with respect to their production. I refer in that regard to the discussion of Rule 22-1(4)(c) in *Galloway v. A.B.*, 2020 BCCA 106 at paras. 49-52.

[37] Although the Wynford Group was advised of this application, given that it was not listed on the cover page of the notice of application as a party against which relief is sought, I will order that Wynford Group may apply to me to set aside this order within two weeks of being served with the order that I have made.

[38] As I advised the parties, it is my view that any decision as to cross-examination, whether of a Wynford Group representative or of any of the affiants, should be made once the documentary record is complete and in final form. The application with respect to cross-examination is adjourned generally.

[39] Finally, I remind the parties of my concerns about the fact that the current owners of the Simmons strata lot have not been given notice of these proceedings. To the extent that any of the orders sought may affect their interests, it will be important to ensure compliance with Rule 8-1(7), which requires that every application be served on "each of the parties of record and on every other person, other than a party, who may be affected by the orders sought."

[40] The costs of the hearing before me, given that only a small portion of it, in my view, related directly to the document production issue, should be in the discretion of the judge who ultimately decides this matter on the merits.

Other Requests

[41] Now, I turn to requests that were made just before I began reading out these Reasons for Judgment. One request is that any fees charged by Wynford for copying and producing these documents should be paid by the Richardsons as the people who are seeking production. In my view, that is a reasonable request. The party seeking production should pay the costs.

[42] The second request was for clarity as to the order that is to be made. The first category of documents sought was all emails sent or received by that specific email address and, in my view, that is a clear direction. The second category is all emails sent or received by Wynford employees in respect of the June 2020 SGM. I see that as a reasonably clear direction as well. I do think it is appropriate, however, to direct

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that production should be made within 45 days of receipt of the order and any payment of the relevant fees, so that there is a timeline.

[43] The final request was for a *Halliday*-type order. I am not persuaded that a *Halliday* order is required in the circumstances. Although I was not referred to any law on that, I would expect that the party seeking a *Halliday* order would point to something in the evidence indicating a potential risk of irrelevant or privileged documents being produced. Nothing in the records indicates that there was any direct involvement of Wynford in dealing with lawyers on this matter and, given the nature of the strictures on the order, the way the production is defined, I do not see a risk that irrelevant documents would be produced. So I think making this a *Halliday* order would simply slow matters down and I am not satisfied that it is justified.

[44] Anything arising? Yes?

[45] CNSL M. HOLMES: Just on the Wynford order, is my friend supposed -- are you making an order that she contact Wynford directly?

[46] CNSL J. LEBBERT: I was just going to ask about service.

[47] THE COURT: Well, I am not ordering her. Just if she wants -- if she wants the documents --

[48] CNSL M. HOLMES: If she wants to, is she to contact Wynford directly?

[49] THE COURT: Yes.

[50] CNSL M. HOLMES: -- there's no obligation on the strata to contact, because your first order was that we do it.

[51] THE COURT: No … earlier in this judgment, I said:

> [33] I am advised that Wynford Group was sent a copy of the Richardsons' notice of application seeking document production pursuant to Rule 22-1(4). That said, the Wynford Group was not specifically identified in the cover page as a party against whom relief is sought.

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[52] What I meant to say in my final sentence there is that, as a result, should Wynford Group wish to take the position that there is something -- that this order should not have been granted, that they may apply within two weeks of the order being served on them for reconsideration, given that they were not formally served with a document indicating that they were a party against whom relief was sought.

[53] The order is being made against Wynford and there is no onus on the Strata Corporation to do anything, other than the usual cooperation in having the order entered.

[54] CNSL M. HOLMES: All right, thank you.

[55] CNSL J. LEBBERT: And just a quick question for clarity, so when you say proper service on Wynford, is that -- that's just ordinary service?

[56] THE COURT: Yes.

[57] CNSL J. LEBBERT: And we don't have to name -- 'cause as far as naming them --

[58] THE COURT: Well, hopefully you will have the proper legal name for Wynford. I did not look it up … it is up to you to figure out what is the best way to serve them.

[59] CNSL J. LEBBERT: Okay.

[60] THE COURT: It is … an order is binding when it is served and, like I say, because they were not named on the cover page of the motion, I just wanted to make sure that they were not thinking, “Well, because we are not listed on the cover page, we did not need to bring these concerns to the court's attention.”

[61] CNSL J. LEBBERT: And then -- so just so I understand, so if Wynford, within two weeks of service may apply to set aside, so that would -- just for my clarity, that would require them to make a -- file a notice of application seeking to set aside, then we would have the normal opportunity to respond and --

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[62] THE COURT: Yes.

[63] CNSL J. LEBBERT: Okay. I think that's it, yeah.

[64] CNSL M. HOLMES: Sorry, and just to clarify one more thing. She's -- the request against -- the order made against Wynford is only for the emails sent or received by [redacted]@wynford.ca and you said something about Wynford employees.

[65] THE COURT: Yes. I was reading more or less from the notice of application. Emails sent or received by any employees of Wynford on behalf of or in connection to its management Strata Corporation as they relate to the June 17, 2020 SGM. So it is emails about the SGM.

[FURTHER SUBMISSIONS RE BASIS FOR A HALLIDAY ORDER]

[66] THE COURT: I think we should probably allow the Wynford documents to be reviewed for privilege.

[67] CNSL J. LEBBERT: Reviewed by the Strata Corporation's counsel.

[68] THE COURT: Yes, reviewed by the Strata Corporation's counsel for privilege. They should produce a Part 4-type list of any documents that they fail to pass on, on the grounds of privilege, and that way you have a basis to challenge it if you have a need to.

[69] CNSL J. LEBBERT: And just to clarify, because when my friend gave her submissions, she said she wants to be able to redact for privilege, relevance, and confidentiality --

[70] THE COURT: No, I have said privilege.

[FURTHER SUBMISSIONS RE TIME RANGE FOR PRODUCTION]

[71] THE COURT: So it starts on March 2, 2020, and it ends the day the minutes were sent out.

[SUBMISSIONS]

[72] THE COURT: Well, my direction is that it starts March 2, 2020, and it ends the date that the minutes were sent out, and hopefully the parties, between the two of you, can agree on what date that was and fill it in when you actually submit the order.

[SUBMISSIONS]

[73] THE COURT: I think if it is being reviewed for privilege then it is fair to have July 29th as the end date.

“Veenstra J.”

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