

CANADA / JUDGMENT

Buchner v. Longenecker

2025 BCSC 804

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 804 Buchner v. Longenecker

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Buchner v. Longenecker,

2025 BCSC 804

Date: 20250430

Docket: S10744

Registry: Courtenay

Between:

Frank Gordon Buchner and Diana Buchner

Plaintiffs

And:

Charles Longenecker and Deirdre Longenecker

Defendants

Before: The Honourable Madam Justice D. MacDonald

Reasons for Judgment

Counsel for the Plaintiffs:

J. Lebbert

Counsel for the Defendants:

Z. White

Place and Dates of Hearing:

Courtenay, B.C.

January 22-24, 27-28, 2025

Place and Date of Judgment:

Courtenay, B.C.

April 30, 2025

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Introduction

- [1] Before me are two civil actions. In the Notice of Civil Claim, the plaintiffs, Frank and Diana Buchner, request a mandatory injunction to remove or reduce a structure built on the defendants' property. The defendants to the Notice of Civil Claim, Charles and Deirdre Longenecker, have also filed a Petition seeking to cancel or modify the Building Scheme which governs the building of structures on the parties' properties. Both the Notice of Civil Claim and the Petition are based on the same underlying facts - a dispute between neighbours residing in the same strata development, Nile Landing.

- [2] The Buchners previously filed an Application for a temporary injunction, which was heard on September 21, 2023. The Application was dismissed.
- [3] The two present actions were heard together in January 2025. The underlying factual matrix demonstrates the difficulties with living in a strata development where there are restrictions placed upon owners of properties that would not be placed on freehold owners. The dispute here has led not only to animosity between the two neighbours; it has resulted in a polarization of the community as strata owners lined up to support the position of either the plaintiffs or the defendants. The bitterness between the two sides was palpable in the courtroom.
- [4] The Strata Corporation was originally created in July 2008 by two developers: Todsen Design & Construction Ltd. and McTay Holdings Ltd. (the "Developers"). On the creation of Nile Landing, the Developers filed with the Land Title Office:
- Strata Plan VIS6595;
 - Sewerage System Standard Practice Manual Version 2 prepared by the British Columbia On-Site Sewerage Association for the Ministry of Health (the "Sewage Practice Manual");
 - Statutory Building Scheme #FB184738 (the "Building Scheme"), which sets out numerous restrictions on the development of strata lots in Nile Landing and created a Design Approval Officer ("DAO") to manage the restrictions; and
 - a set of strata bylaws (the "Bylaws").
- [5] I will refer to the strata as Nile Landing. Nile Landing is a 32-lot bare land strata development located in Bowser, BC.
- [6] The Buchners are the owners of Strata Lot 19 at 3838 Creekside Drive in Nile Landing. They seek a mandatory injunction against the defendants to remove or reduce an extension to their dwelling (the "Extension") that they allege is in breach of the Building Scheme. In particular, the Buchners allege that the Building Scheme prohibits building a structure outside of the building envelopes on each strata property in Nile Landing. The Buchners take the position that the Longeneckers knew they would be in breach of the Building Scheme prior to starting construction on the Extension and that they willingly proceeded with it at their own risk.
- [7] In the alternative, the Buchners seek damages in lieu of an injunction. They request that I consider the following damages: equitable, general, and punitive. The Buchners primarily seek punitive damages from the Longeneckers both to punish and denounce the Longeneckers for their disregard for the Building Scheme. The Buchners emphasize that a majority of owners enjoy and desire to protect the Building Scheme and they want to deter other owners from following in the Longeneckers' footsteps by acting in breach of the Building Scheme. The Buchners contend that it is not up to any individual owners to "decide" that the Building Scheme is no longer enforceable, and such conduct should be rebuked and

strongly discouraged.

- [8] The Longeneckers own Strata Lot 3 at 3936 Creekside Drive in Nile Landing. They admit they added the Extension which is allegedly in breach of the Building Scheme. The Longeneckers argue that their "breach" should be permitted for three reasons: 1) there is no way to enforce the Building Scheme; 2) there has been acquiescence of such breaches in the past by Nile Landing such that owners have demonstrated through their actions that they do not intend to be bound by the Building Scheme; and 3) the Buchners do not have clean hands in bringing this Application.
- [9] In their Petition, the Longeneckers seek an order pursuant to s. 35 of the Property Law Act, R.S.B.C. 1996, c. 377 [PLA] cancelling ss. 1 and 2(b) of the Building Scheme. In the alternative, they seek an order modifying ss. 1 and 2(b) to remove the requirement that owners must seek approval of the DAO to build outside the boundaries of the building envelope of their lots. In the further alternative, the Longeneckers seek an order pursuant to s. 35 of the PLA extending the building envelope on their strata lot.
- [10] In their Response to Petition, the Buchners say the Longeneckers seek to retroactively legalize the Extension, by way of an order cancelling or modifying the Building Scheme in their favour.[1] The Buchners argue that the Petition ought to have been filed prior to the petitioners' construction of the Extension and that it is an attempt to circumvent the issues raised in the Application. In addition, the facts set out in the Petition fail to establish that any of the conditions set out under s. 35(2) of the PLA are satisfied in the circumstances.
- [11] The Strata Corporation, as represented by Council for the Strata Corporation (the "Council"), takes no position on the orders sought.

Preliminary Issue: Is the Matter Appropriate for Summary Trial?

- [12] On the first day of the proceedings, I accepted the civil dispute as being appropriate to proceed by way of summary trial pursuant to Rule 9-7 of the Supreme Court Civil Rules. I based my decision on the following factors.
- [13] The parties agreed that this matter is suitable for determination by summary trial.
- [14] The facts are mostly, but not entirely, agreed upon. Both parties also agreed that the key factual disputes are: 1) whether the role of the Design Approval Officer ("DAO") was assigned to the Council post-2017; and 2) whether the Buchners themselves were in violation of the Building Scheme.
- [15] While both these issues are significant, both parties are content to have me determine factual disagreements on the basis of affidavit evidence. They are concerned about the time and expense of a viva voce trial.
- [16] Importantly, Rule 1-3 of the Rules provides the following:

Object

- (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

Proportionality

- (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to

- (a) the amount involved in the proceeding,
- (b) the importance of the issues in dispute, and
- (c) the complexity of the proceeding.

[17] Considering the object described above, summary trial is appropriate in this case because:

- a) there are clear triable issues to be determined;
- b) the defendants concede they breached the Building Scheme, eliminating a primary factual dispute between the parties;
- c) the dispute is largely legally based and a summary trial will not add to the complexity in the resolution of the issues;
- d) the discovery process is complete and the parties have been given an opportunity to provide testimony on examinations for discovery so credibility issues will be minimal;
- e) there is an abundance of documentary evidence available to aid this Court in making the necessary findings of fact;
- f) a summary trial is a proportionate, more expeditious, and less expensive means to achieve a just result; and
- g) the cost of taking the case forward to a conventional trial would be unreasonable and prejudicial to the parties.

[18] I also note that the summary trial process has been successfully utilized by this Court in other cases requesting injunctive relief in the context of an alleged breach of a building scheme or easement: *Shuswap Lake Estates Ltd. v. Osborne*, 2014 BCSC 2166; *Suomalainen v. Jernigan et al.*, 2004 BCSC 465; *Vandenberg v. Olson*, 2009 BCSC 1302; *Langlois v. Tessaro*, 2018 BCSC 1463.

[19] Since there are few material facts in dispute, and considering Rule 1-3, I find this matter is suitable for summary disposition based on the factors listed in *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (C.A.) and *Gichuru v. Pallai*, 2013 BCCA 60.

[20] In the interests of proportionality and efficiency, I addressed this dispute through the process of a summary trial.

Issues

[21] I must determine the following issues from the Notice of Civil Claim:

- (1) Should a mandatory injunction requiring the Longeneckers to cease any further work on their property be granted because the Longeneckers built in breach of the Building Scheme?
- (2) Should a mandatory injunction be granted requiring the Longeneckers to take such steps as are necessary to remove or modify any work on their property which is in breach of the Building Scheme?
- (3) If the answer is no to the above questions, is compensation an appropriate remedy?
- (4) If so, are the Buchners entitled to equitable damages, general damages, or punitive damages?
- (5) Are the Buchners entitled to special costs or, in the alternative, costs?

[22] I will outline the regulatory framework before turning to the factual matrix underpinning the issues between the parties.

Regulatory Framework

[23] Section 220 of the Land Title Act, R.S.B.C. 1996, c. 250 [LTA], provides for the creation of a statutory building scheme imposing "restrictions consistent with a general scheme of development". Once a "Declaration of Building Scheme" is registered as a charge against the land, the restrictions created by the building scheme run and bind with all the land affected, together with each owner and successor in title: LTA, s. 220(3). The use and development of all strata lots are governed by the Building Scheme which is registered as a charge against all land within Nile Landing.

[24] In this case, the Building Scheme provides that:

1. No Owner, or anyone acting on behalf of an Owner, shall
 - a) commence any Work on a Strata Lot; or
 - b) make application to or obtain a Building Permit for any construction, alteration, addition or extension to a Dwelling, a Building or any other improvement to a Lot;

without having first received the approval of the Design Approval Officer authorizing the proposed work on the Lot as provided for in the Design Guidelines.

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[25] The Building Scheme defines Work as:

"Work" shall mean and include any improvement of any kind whatsoever to a Lot and, without limiting the generality of the foregoing, shall include any site preparation, clearing, burning, excavation, filling, backfilling, grading or leveling of a Lot and any other construction-related activities on a Lot including any construction, alteration, addition or extension to a Dwelling, a Building or any other Improvement to a Lot, including any change or alteration to the exterior finish, including colour scheme, of a Dwelling, a Building or any other Improvement to a Lot.

[26] Subsection 2(b) of the Building Scheme further provides that:

2. No Work shall be commenced or continued on a Lot by an Owner, or anyone acting on behalf of an Owner, unless:
 - b) all Work with respect to the construction of a Dwelling, a Building or any other structural improvements to a Lot, other than perimeter fencing and landscaping, shall be located entirely within the boundaries of the Building Envelope of the Lot.

[27] The Building Scheme defines "Building Envelope" as:

that part of a Lot which an Owner may construct a Dwelling, a Building or any other structural improvements to a Lot, other than perimeter fencing and landscaping. The Building Envelope for each Lot is that part within the thatched lines on the Plan of the Lot, a copy of which is attached hereto as part of Appendix 1.

[28] "Appendix 1" of the Building Scheme annexes a copy of the plans for each strata lot, which clearly indicates the boundaries of the Building Envelope for each lot.

[29] Section 6 of the Building Scheme provides:

The Developer hereby expressly reserves the right, in its sole discretion, to exempt any Lot remaining undisposed of by the Developer at the time the exemption is to take effect from all or any of the restrictions and benefits contained in this Building Scheme and any such exemption shall not render the provisions so exempted invalid or unenforceable with respect to any other Lot charged by the provisions of this Building Scheme.

[30] In the Building Scheme, the DAO is defined as "the principal of either Developer or any person or corporate body designated by the Developers from time to time as the Design Approval Officer".

[31] Owners in Nile Landing are also governed by the Bylaws. Section 5.0 of the Bylaws relates to work undertaken on a strata lot:

Obtain Approval Before Construction on a Strata Lot

5.0 No owner, or anyone acting on behalf of an owner, shall commence any Work on a strata lot or make application for or obtain a building permit for any construction, alteration, addition or extension to a Dwelling, a Building or any other Improvement to a strata lot without having first received the Approval of the Design Approval Officer authorizing the proposed Work as provided for in Section 1 of the Statutory Building Scheme registered against the title of each strata lot.

[Emphasis added]

[32] It is important in the context of this case that Nile Landing relies on a community septic system for its wastewater. The Sewage Practice Manual establishes maximum "Daily Design Flow" septic rates for residential dwellings. The maximum Daily Design Flow rate for a three-bedroom dwelling (not exceeding 1,885 square feet) is 1,363 litres per day.

[33] The Bylaws were drafted to be consistent with the requirements of the Practice Manual. They provide certain restrictions on allowable square footage for structures and the number of bedrooms that a dwelling can accommodate in line with the Sewage Practice Manual. The Bylaws provide that each of the septic fields can accommodate a Daily Design Flow of 22,700 litres of effluent as provided for in the Sewage Practice Manual (equal to an average daily flow of 1,410 litres of effluent for each strata lot).[2]

[34] The preamble to the Bylaws states:

Preamble - The Environmental Management Act of British Columbia prohibits the discharge of domestic wastewater and sewage, save and except as provided for in the Sewage System Regulation to the Health Act of British Columbia.

As at April 24, 2008 there is no regional or municipal (public) sewer system available to service any strata lot in the Development. As such, all domestic wastewater and sewage for a single family residential dwelling constructed on a strata lot must be disposed of by an on-site, in-ground sewerage disposal system including a septic tank, pump tank and septic field, together with all pipes, valves, fittings and facilities in connection therewith (hereinafter collectively called a "Sewerage System").

A Sewerage System must be constructed by each owner of a strata lot in accordance with the requirements of the Sewerage System Standard Practice Manual Version 2 dated September 21, 2007 prepared by the British Columbia On-Site Sewerage Association for the Ministry of Health, as the same may be amended from time to time (hereinafter called the "Practice Manual").

Save and except as stated otherwise herein, the owner of a strata lot will be responsible for all costs, charges and expenses incurred for the installation, inspection and approval of an approved Sewerage System for the strata lot.

The Developers have constructed two independent communal Septic Fields for the Development in accordance with the Practise Manual under the supervision of Douglas Anderson of Anderson Civil Consultants Inc. of Nanaimo, British Columbia. Douglas Anderson is a professional engineer certified as a "Professional" under the Sewerage System Regulation of the Health Act of British Columbia.

One communal septic field (the "West Septic Field") has been constructed on part of the Common Property adjacent to the western boundary of Strata Lot 32, together with in-ground pipelines to service each of Strata Lots 1 to 14, 31 and 32.

The other communal septic field (the "East Septic Field") has been constructed on part of the Common Property adjacent to the northern boundary of Strata Lots 25 to 29, together with in-ground pipelines to service each of Strata Lots 15 to 30.

The West Septic Field and the East Septic Field each have a maximum Daily Design Flow of 22,700 litres of effluent as provided for in the Practise Manual, which is equal to an average daily flow of 1,410 litres of effluent for each of the 16 strata lots connected to the West Septic Field and for each of the 16 strata lots connected to the East Septic Field.

The Practise Manual establishes maximum Daily Design Flow rates for certain residential dwellings as follows:

- (a) 1,136 litres per day for a one or two bedroom dwelling having a maximum living area of 150 m² (1,600 ft²);
- (b) 1,363 litres per day for a three bedroom dwelling having a maximum living area of 175 m² (1,885 ft²); and
- (c) 1,700 litres per day for a four bedroom dwelling having a maximum living area of 235 m² (2,530 ft²).

Douglas Anderson has determined that any residential dwelling constructed on a strata lot connected to either the West Septic Field or the East Septic Field should be restricted to either a three (3) bedroom dwelling with a maximum living space of 185 m² (1,990 ft²) or a two (2) bedroom dwelling with no limitation on the maximum living space.

[35] To keep the septic fields operating within the limits set out in the Sewage Practice Manual, Bylaw 5.1 provides that dwellings in Nile Landing may not exceed 1,990 square feet "unless otherwise approved by the Design Approval Officer, acting reasonably and with full regard to the maximum Daily Design Flow of 22,700 litres for the Septic Field forming part of the Sewerage System of any such strata lot."

Factual Background

The Strata Development, Nile Landing

- [36] In 2004, the site for Nile Landing was purchased by the Developers. On June 23, 2008, Nile Landing was created by the filing of Strata Plan VIS 6569 with the Land Title Office. The Bylaws and Building Scheme were also filed around the same time. At that point, it was a single lot on which the home that is now on Strata Lot 22 was already located. The area was developed into a single street community with Creekside Drive running through the middle of the development. There are 10 homes on the north side and 22 homes on the south side of Creekside Drive. In 2010, Strata Lot 3 was completed by the original builder Allan Versteeg. Strata Lot 3 is currently owned by the Longeneckers.
- [37] The Buchners purchased Strata Lot 19 from Mr. Versteeg in December 2018 as construction on the property was still in progress. They moved into Strata Lot 19 in the Summer of 2019.
- [38] The Longeneckers purchased Strata Lot 3 on July 20, 2022 and moved in shortly thereafter.
- [39] The Buchner Property and the Longenecker Property are both on the south side of Creekside Drive, 13 lots apart from each other. The Nile Landing community is spacious, quiet, and well-maintained. The affidavit evidence demonstrates that the Building Scheme requirements are noticeable when you walk through Nile Landing. There is consistency in terms of size, placement, quality, and overall aesthetics amongst the homes on the street.
- [40] The owners in Nile Landing are almost all retirees, with one or two occupants per household.

Exemption to the Building Scheme for Non-Habitable Structures

- [41] At the 2013 Annual General Meeting (AGM), Rick Todsén, one of the Developers, reminded owners that sheds needed to be located inside each of the owners' building envelope.
- [42] In 2015, when the development of Nile Landing was well underway, the Developers realized that numerous owners and buyers were interested in installing sheds and other small structures in the backyards of their strata lots, outside of their building envelopes. At the 2015 AGM, Bob Taylor, one of the Developers and then-President of the Council, informed the strata owners that they would be permitted to construct small sheds and other non-habitable structures in their yards, outside of their building envelopes, as long as those structures did not exceed 104 square feet in size (the "Small Structure Exemption").
- [43] The Small Structure Exemption is reflected in the 2015 AGM Minutes as follows:
2. PRESIDENT'S REPORT - Bob Taylor. New owners were welcomed and a general thank you to all owners for caring so well for their properties and the strata community. He reminded owners that sheds over 104 sq. ft. need to have building permits and be built within the building envelope. Smaller structures (i.e. moveable sheds) can be located along fences and outside the building envelope.

[Emphasis added]

[44] As noted by Ms. Todsen, another Developer, the Small Structure Exemption was intended to be a "blanket approval" for owners to place moveable structures under 104 square feet anywhere on their strata lots. She specifically states in her first affidavit:

Our intention was to clarify to owners that, from that point on, they had a "standing approval" from the developers and did not need to obtain any further approval of the DAO to construct or install smaller Moveable Structures under 104 sq. ft. in size on their strata lots, whether those Moveable Structures were located inside or outside of the strata lot's Building Envelope.

.

The location and size of habitual dwellings, needed to remain in compliance with the Building Scheme and Bylaws.

[45] Consequently, many owners in Nile Landing have some structures on their properties outside of the building envelope.

[46] According to the affidavit evidence, when the Buchners purchased Strata Lot 19 in 2018, they noticed that other strata lots in Nile Landing had small sheds in their backyards. Assuming that this meant these structures had been approved by the Developers, who still acted as DAO for the Strata, the Buchners asked Mr. Versteeg if he would build a shed for them as well.

[47] Mr. Versteeg advised the Buchners that it would not be economical for him to build them a shed; however, he agreed to pour a concrete slab to be used as the foundation for a shed. Mr. Versteeg had done the same for other strata lots that he developed in Nile Landing. The Buchners agreed and the concrete was poured.

[48] During the summer of 2019, Mr. Buchner built a shed on the concrete slab outside of the building envelope. In 2021, Mr. Buchner moved the shed to a different location on the property also outside of the building envelope. As Mr. Buchner states in his affidavit:

In the summer of 2019, after we moved into SL19, I built a small shed, approximately 10 ft. by 10 ft. in size, on the concrete slab poured by Mr. Versteeg. I later re-located this shed to a different location on SL19 (also outside the Building Envelope) in 2021.

[49] The evidence suggested that a second concrete slab was poured to accommodate the shed when it was relocated on the Buchners' property. Since then, Mr. Buchner has added the three additional structures to the backyard of the Buchner Property. The Buchners currently have four structures located outside their building envelope:

- a shed, which is 100 square feet in size;
- a trailer cover, with no side walls but which is placed on a cement foundation, which is currently 100 square feet in size;

- a greenhouse, which is 70 square feet in size; and
- a woodshed, which is 32 square feet in size.

[50] When it was initially built, the trailer cover was 10 by 16 square feet.

Who is Acting as DAO?

[51] When the Strata was first created, the Developers were intimately involved with the operation of Nile Landing because they were the owners and developers of numerous unsold lots. From its inception in 2008 until the Developers' exit from Nile Landing after the sale of the final lot in 2017, the Developers acted as the DAO. They also had representatives - Bob Taylor for McTay Holdings Ltd. and Linda Todsens for Todsens Design & Construction Ltd. - on the Council.

[52] After the Developers surrendered their oversight of Nile Landing in 2017, the Council was left with the task of managing the Strata and enforcing the Bylaws. The question for the purpose of this litigation is whether the Council was also assigned the role of DAO and, if so, whether it could enforce and/or approve deviations from the Building Scheme.

[53] Ms. Todsens deposed that at a spring meeting of Council in 2017, she advised that she would be resigning from Council at the June 2017 AGM. She further deposed that at the spring meeting:

It was evident from my discussions with the Council that their preference was to assume the role of DAO, so with the consent of Council, the DAO role was transitioned over to the Council. We and Council understood that the two vacant lots (Strata Lots 19 and 23), were to be, once sold, approved for construction by the Council as DAO, along with the couple of other lots that were sold to others but not built on yet.

[54] I note that the minutes of the above-mentioned meetings are not attached as exhibits to Ms. Todsens's affidavit. From this I assume there is no written record of the DAO role being transitioned to Council.

[55] In any event, since 2017 Council has sometimes acted as though it was the DAO, while at other times Council has expressed confusion about its role or outright denied that the Council had taken on the role of DAO.

[56] For example, in February 2019 there was a discussion at Council regarding concerns that new construction on Strata Lot 9 was not compliant with the Building Scheme:

5. New Business

- a. Concerns had been raised about whether the plans for new construction on Lot 9 were subject to proper review with respect to the Building Scheme and the Developers "Design Guidelines". Don McKenzie advised that in a discussion with the Developers, they had indicated they would look at the plans. This will hopefully ensure that there are no significant deviations from the original development concept for our Strata.
- .

[57] In March 2019, email correspondence was exchanged between then-Council President, Don McKenzie, and Annette Nichols, one of the owners of Strata Lot 9. In the email, Council purported to approve the plans for Strata Lot 9 "with the assistance," but not the explicit approval, of Mr. Rick Todsens:

From: Donna McKenzie <donna.mckenzie4@gmail.com>

Sent: March 30, 2019 7:47 AM

To : Nile Creek nicholls <annette_nicholls@hotmail.com>

Subject: Lot 9 - New Home Plan

Hi Annette and Brian,

Thank you for approaching Rick Todsens and the Nile Landing Strata with your proposed new home plan. As Rick shared with you all is within the guidelines that the developer set forth. At our council meeting on March 28, 2019 the information was shared with all strata members.

With the assistance of Todsens Design and the Nile Landing Strata VIS 6595 your new home plan is approved.

What a beautiful new addition to the street.

Don Mckenzie

President

[58] I note that Mr. Todsens was not the individual who had previously been on Council, that was Ms. Linda Todsens, his wife.

[59] On March 20, 2020, there was an email exchange between then-Council Secretary, Paul Phillips, and Ms. Todsens.

[60] At 12:06 PM, Lorraine and Paul Phillips wrote:

Good morning,

I have been reviewing the Developer Disclosure Document for the Nile Landing Strata Development. Particularly with respect to the Building Scheme where it notes that approval from a "Design Approval Officer" must be obtained before work is done on any lots in the Strata. Given that development has been completed for several years now and your involvement has ceased we would like to know if, as the Developer of Nile Landing Strata, it would be possible for you to

provide a letter designating the Nile Landing Strata Council as the Design Approval Officer going forward. Without this it would seem that the Council is not able to ensure the directives related to the 'Building Scheme' are adhered to, particularly as it relates to alterations to dwellings and lots.

Look forward to your reply.

Sincerely,

Paul Phillips

Sec./Treasurer

Nile Landing Strata VIS6595

[61] Ms. Todsen replied as follows:

Hello Paul,

Our understanding and discussions with a previous strata council board has been that now that we, the developers (McTay Holdings and Todsen Design and Construction), are no longer owners in any of the properties in Nile Landing (and actually even before the final couple of properties were sold), that the Nile Landing Strata Council was to take over providing the necessary approvals through the Design Review process. It was a natural progression, with the guidelines being in place to follow, that the Strata Council would act in the best interest of the Nile Landing community in their decision making, rather than keeping us involved and that was actually what the Council at that time preferred to happen. We have always said though that we are available should a situation arise that the Council did not know how to handle, that we are available to contact for advice or support.

[62] Mr. Phillips sent another email requesting further confirmation from Ms. Todsen that the Developers had transferred the DAO authority to the Council:

Hello Linda,

Thank you for your reply. I believe, if possible, a formal letter would be the best solution. In the last few years there has been quite a lot of debate and many different opinions on the Strata Councils role and responsibilities with respect to the enforcement of the Building Scheme and/or Design Review approval. A letter designating the Strata Council as having the authority passed on from the Developer would go a long way to resolving many issues.

Regards,

Paul Phillips

Secretary/Treasurer

Nile Landing Strata VIS6595

[63] It appears there was no further follow-up to the request for confirmation in writing that Council had been "designated by the Developers" as the DAO until July 2023.

[64] On July 24, 2023, Edward Shopik, a member of the Council, sent an email to Ms. Todsén requesting confirmation that the Council held the role of the DAO. On July 26, 2023, Ms. Todsén provided a letter to Mr. Shopik, where she advised:

"The duties that we undertook for many years for the Nile Landing Strata as the original developers and as members of the strata council, were to then be undertaken solely by the strata corporation, by the duly elected council members. In working with those on the Strata Council over the years it was very clear that they, on each new Council, understood and took seriously the importance of carrying out the bylaws and regulations in the Building Scheme, Strata Bylaws and Design Guidelines, to preserve and protect the intention of the harmonious and aesthetically pleasing neighbourhood."

[65] Mr. Shopik provided the Council with this letter on August 12, 2023. However, the Council responded by sending a letter to Ms. Todsén advising that the Council did not accept and would not accept the role of DAO. A few days later, the Council also emailed the owners of Nile Landing to confirm that the Council did not have the authority to enforce the Building Scheme, nor elements of the Bylaws that are tied back to the Building Scheme.

[66] On August 24, 2023, in contrast to his April 2019 email that the Council did not have the jurisdiction to enforce the Building Scheme, Mr. Senini, legal counsel for the Developers, sent a letter to the Council stating that the function of the DAO had transitioned from the Developers to the Council in "early 2017". Council replied to Mr. Senini on September 17, 2023, seeking documentation in respect of the transfer of the DAO role in 2017. It does not appear that there was any further response from Mr. Senini or Ms. Todsén.

The Extension

[67] Shortly after purchasing their lot in Nile Landing, the Longeneckers decided to add the Extension onto their home.

[68] In October 2022, Mr. Longenecker had an interaction with Mr. Buchner. There is conflicting evidence from Mr. Longenecker and Mr. Buchner as to whether they discussed the Extension during this conversation. The Longeneckers spoke to both of their adjacent neighbours, the Stackhouses and the Outhwaites, about the Extension. Both the Stackhouses and the Outhwaites signed letters concurring with the Longeneckers' plans for their Extension and without objecting to the Extension.

[69] The Longeneckers sought and received approval for the Extension by the Regional District of Nanaimo. They also retained B4 Engineering Inc. to provide an opinion on the effect of their proposed construction on Nile Landing's septic system. The report concluded that the Extension would not increase the residential septic flow from the Longenecker's residence.

The report is sparse, but it was prepared pre-litigation. The Longeneckers also attempted to obtain approval from the Council which proved to be much more complicated. I outline these steps in the analysis section of these reasons.

- [70] Mr. Buchner sent an email to the Council on June 25, 2023, expressing concern about the work being planned by the Longeneckers. Shortly thereafter, Mr. Longenecker emailed the Council a copy of the B4 Engineering report and responded to Mr. Buchner's concerns. The Council also replied to Mr. Buchner, advising that they had no role in the enforcement of the Building Scheme.
- [71] The Longeneckers began construction on the Extension in July 2023 which added 627 square feet and an additional bathroom and family room. The completed Extension exceeds the building envelope by 67 square feet.

Parties' Positions

- [72] The Buchners argue that a mandatory injunction should be ordered against the Longeneckers to remove or reduce the Extension because the Longeneckers are willfully in breach of the Building Scheme registered on all properties in Nile Landing.
- [73] The Buchners take the position that s. 1 of the Building Scheme requires an owner to obtain the approval of the DAO before commencing work on a strata lot and that s. 2(b) "outright prohibits the construction of a dwelling outside of a strata's building envelope."
- [74] The Longeneckers argue there is either i) no breach because the Building Scheme is unenforceable, or ii) their breach should be permitted because there has been acquiescence of such breaches in the past. They also contend that the Buchners do not have clean hands, a necessary prerequisite to bringing their Application.

Analysis

The Civil Claim

- [75] It is expected that individuals that live in a strata development will disagree from time to time. That is why the governing legislation requires meetings on proper notice, quorum at meetings, votes, and other procedures. However, despite the best-intended bylaws, governing legislation, and regulations, the rules often remain ambiguous to trained legal professionals, never mind to the non-legally trained strata owner. Such ambiguities have arisen in the case at bar.
- [76] There are two main ambiguities here. The first is whether a designated authority, such as the DAO, can authorize exemptions to the Building Scheme even after a strata lot has been sold ("disposed"). The second is whether the Council has been made the DAO, or otherwise designated as some form of authority by the Developers, such that it would be able to make approvals under s. 6 or s. 1 of the Building Scheme.

- [77] I start by noting that while the Buchners refer to various alleged breaches of the Bylaws, I will not consider the Bylaws here. I find that the Buchners do not have standing to bring a claim against other individual owners for Bylaw violations. The Civil Resolution Tribunal ("CRT") has consistently held that individual owners do not have standing to bring a claim against other individual owners for Bylaw violations: *Edwards v. The Owners, Strata Plan BCS 3364 et al*, 2019 BCCRT 1092 at para. 22; *Kuan et al v. The Owners, Strata Plan NW2603*, 2019 BCCRT 800; *Cheikes v. BM Clubhouse 40 Ltd.*, 2023 BCSC 14 at para. 23. This is because s. 26 of the Strata Property Act, S.B.C. 1998, c. 43 [SPA] states that the strata council, not individual owners, exercises the powers and duties of the strata, including enforcing the strata's bylaws.
- [78] While I am not bound by the decisions of the CRT, I agree with the reasoning in these decisions. Strata unit owners cannot bring derivative actions on behalf of their respective strata corporation and it is the strata corporation that exercises the power to enforce the strata's bylaws under the SPA: *Extra Gift Exchange Inc., et al v. Ernest & Twins Ventures (PP) Ltd., et al.*, 2007 BCSC 426 at para. 64. Under ss. 163-165 of the SPA, the Buchners do not have standing to seek an order for the strata corporation to enforce the Bylaws because the Strata is not a party to their application. I therefore will not consider whether the Longeneckers have violated the Bylaws.
- [79] The Buchners have standing to enforce the Building Scheme. When an owner is in violation of a statutory building scheme restriction, all owners of property covered by the building scheme are entitled to enforce the benefits of the scheme by way of legal action against the offender: *Suomalainen* at paras 49-50.
- [80] The legal remedies available to an owner in the event of another owner's breach of a statutory building scheme include a mandatory injunction requiring the offender to take all necessary steps to bring the construction into compliance with the statutory building scheme or, in appropriate cases, an award of equitable damages in lieu of a mandatory injunction: *417489 B.C. Ltd. v. Scana Holdings Ltd.*, [1998] B.C.J. No. 140, 1998 CanLII 6770 (BCSC) [Scana Holdings].
- [81] The Building Scheme was created, in part, to protect each strata lot's privacy, views, and to maintain a certain community aesthetic in Nile Landing. Ms. Todsén deposed:
- When we developed the Building Scheme, Bylaws and Design Guidelines, we did so with a vision for a harmonious community that would begin as and always be aesthetically pleasing, environmentally sound, functional, uncrowded, quiet, and picturesque.

When we planned the development, we also intentionally designed "Building Envelopes" for each strata lot so as to enhance the aesthetics of the neighbourhood and to ensure that dwellings on strata lots were not within or near the covenanted areas or on easements, would not block ocean or forest views and would have building areas of a similar size. The Building Envelopes also created varying roadside setbacks so that dwellings could not be constructed in front of each other due to the varying depths of the properties.

- [82] According to the plaintiffs, the restrictions were also created with the intention of preserving the Strata's two common septic fields which are a primary reason why Nile Landing was stratified. Being developed as a strata means that all owners share in the costs of repairing and maintaining the septic fields.
- [83] While these are commendable objectives, they do not answer the question of why, and on what grounds, exemptions were permitted by the Developers and how exemptions are now to be obtained.
- [84] As set out above, s. 1 of the Building Scheme requires an owner to obtain the approval of the DAO before commencing work on a strata lot. Section 2(b) of the Building Scheme prohibits the construction of any structural improvement other than perimeter fencing and landscaping outside of the given Building Envelope.
- [85] Section 6 of the Building Scheme sets out the manner in which a strata lot owner may be exempted from s. 2. As the Buchners point out, s. 6 refers only to the Developer, not the DAO. However, "Developers" are defined as including "Todsens Design and Construction Ltd. and McTay Holdings Ltd and their duly authorized agents, successors and assigns". The DAO, if properly designated, would be a successor or assign.
- [86] Significant time was spent at trial determining who constituted the DAO after the Developers left in 2017. Ms. Todsens deposed that the role of DAO was assumed by the Council in 2017 and that the Council of that time was aware of this transfer of power. However, the Council in place at the time this dispute arose took the position that they were never assigned such a role and, in any event, the Council refused to accept the role of DAO.
- [87] I also note that in April 2019, Mr. Senini, a lawyer for the Developers, wrote an email to then-President of the Council indicating that the Council did not have the jurisdiction to enforce the Building Scheme. After the dispute arose, he reneged on this opinion and now says the role of DAO was transitioned to the Council. There was no explanation given for this pivot.
- [88] There is no persuasive evidence before me that the Developers "designated" the Council as the DAO despite being required by the Building Scheme. There is no documentation of any "transfer of power" and without it there is no authority for the Council to enforce and/or approve deviations from the Building Scheme.
- [89] There has clearly been no consensus regarding the enforcement of the Building Scheme since the Developers removed themselves in 2017. On April 11, 2019, well before the Longeneckers purchased their strata lot, legal counsel for the Developers indicated that the

Council did not have jurisdiction to enforce the Building Scheme. Following this legal advice, there were two attempts to incorporate a portion of the Building Scheme into the Bylaws since bylaws are enforceable by Council. Both attempts failed. The first attempt was June 8, 2019, where a resolution at a Special General Meeting failed to receive the required 3/4 vote in favour. The second attempt was at the February 27, 2021 AGM where again the resolution failed to pass the 3/4 vote.

- [90] Section 6 of the Building Scheme also states that an exemption may only be granted by the Developers - or its successor or assign - for a strata lot "remaining undisposed of by the Developer at the time the exemption is to take effect."
- [91] The Longeneckers were aware of the Building Scheme, but assumed that because there was no longer a DAO the Building Scheme was obsolete or, at minimum, unenforceable. They did not understand s. 6 of the Building Scheme to outright prohibit owners from seeking exemptions once the Developers had sold the lots. They simply believed there was no DAO in place and therefore their Extension could not be approved.
- [92] The Buchners argue that, regardless of who the DAO is designated to be, that entity has no discretion to grant an exemption to allow an owner to extend their dwelling beyond the building envelope: Building Scheme, s. 6. In other words, as soon as the Developers disposed of a lot, no further exemptions could be granted for that lot.
- [93] The Buchners say the Building Scheme is enforceable and the defendants took self-help measures with the construction of the Extension outside the building envelope. They did so at their own risk.
- [94] I agree with the Buchners that the literal interpretation of s. 6 of the Building Scheme is that after a strata lot had been purchased from the Developers, there is no longer any ability to grant exemptions from the requirement not to build outside the building envelope.
- [95] Based on this literal interpretation, the Longeneckers were technically in breach of the Building Scheme. I say technically because the Longeneckers did not set out to ignore the regulatory restrictions on their property; they simply had no way to have their proposed extension approved.
- [96] Significantly - in the context of this case - there are numerous other breaches of the Building Scheme across the properties in Nile Landing. For example, the Buchners raise the fact that the Longenecker Property benefits from a third bathroom due to the Extension. They emphasize that there are only two other homes in Nile Landing with three bathrooms:
- i. Strata Lot 22, which is exempt because it existed prior to the creation of Nile Landing; and
 - ii. Strata Lot 25, which was constructed in 2016 when the Developers were still involved in the management of Nile Landing.

- [97] While Strata Lot 22 was built prior to Nile Landing existing and is explicitly exempt from certain sections of the Building Scheme, there is no record in evidence of an approval for the third bathroom on Strata Lot 25.
- [98] In addition, the structure on another lot, Strata Lot 23, protrudes beyond the Building Envelope. Again, there is no record of an approved exemption, but it was built when the Developers were still involved with the Strata.
- [99] Most importantly, the Small Structure Exemption, which the Buchners are currently utilizing, is in violation of the Buchners' interpretation of s. 6. The construction of any structural improvement outside of the building envelope is inconsistent with a plain reading of s. 2(b) of the Building Scheme:

All Work with respect to construction of a Dwelling, a Building or any other structural Improvements to a Lot, other than perimeter fencing and landscaping, shall be located entirely within the boundaries of the Building Envelope of the Lot, save and except for the Dwelling and the deck attached thereto located on Strata Lot 22 which, as at March 20, 2008 has been constructed outside of the Building Envelope as illustrated in Annexure 1;

- [100] The Small Structure Exception purported to constitute an exception to s. 2(b), presumably granted through s. 6 of the Building Scheme. However, the Small Structure Exception was in many cases granted by the Developers to owners after the lots had been disposed, i.e., after owners had already purchased their strata lots.
- [101] This highlights a major limitation of s. 6, namely, that it is unclear who could ever request an exemption from the Building Scheme after a strata lot was sold. As I read the Building Scheme, a prospective buyer could do so in some narrow circumstances. The most obvious situation where an exemption would be requested by an owner of a strata lot is entirely precluded by the language of s. 6.
- [102] There are numerous strata lots in Nile Landing, including the Buchners', that have installed small sheds, greenhouses, and other structures on their properties outside the building envelope, and these structures were granted exemptions for s. 2(b) after the lots had been "disposed of", or sold. The Building Scheme was never revised to reflect these changes in practice even though multiple owners have made use of the exemption.
- [103] It is ironic that the Small Structure Exemption does not apply any limit to the type or number of structures that may be built outside of the Building Envelope, only to their individual sizes. The ability to build unlimited structures in one's backyard arguably goes against the very purpose of the Building Scheme articulated by Ms. Todsen: to maintain an aesthetically pleasing and uncrowded environment in Nile Landing.

- [104] Despite the Small Structure Exemption being inconsistent with s. 6 of the Building Scheme, no objection appears to have been made to the Exemption. At no time has Council, nor any owner, complained to the Buchners that the structures on their property were in breach of the Building Scheme; the structures built under this Exemption have not been treated by the owners as a breach of the Building Scheme. The first time this position was ever expressed was by the Longeneckers in response to this Application.
- [105] Finally, even if free-standing sheds and other non-habitable structures do not constitute "structural improvements" -- and the Small Structure Exemption was consistent with s. 2(b) and s. 6 of the Building Scheme -- the Buchners have not complied with the Small Structure Exemption. The Buchners installed at least one and more likely two concrete foundations for their structures. At least one of the Buchners' four structures has electricity or some source of power hooked up to it. The trailer cover was initially 10 by 16 square feet. Mr. Buchner admitted in his examination for discovery that he did not obtain a building permit for the trailer cover. Moreover, the cement slab and the electrical connection indicates that at least some of the structures are permanent and non-moveable, contrary to the decision made at the 2015 AGM, partially reproduced below:
- [Bob Taylor] reminded owners that sheds over 104 sq. ft. need to have building permits and be built within the building envelope. Smaller structures (i.e. moveable sheds) can be located along fences and outside the building envelope.
- [106] Notably, the Buchners had their concrete slab poured before they were even aware of the Small Structure Exemption.
- [107] Based on the above, I find that ss. 2(b) and 6 of the Building Scheme are not being followed.
- [108] The Longeneckers rely on this to say the Buchners have acquiesced to breaches of the Building Scheme. This Court has "endorsed the principle that it may deny an injunction against a breach of a building scheme to a party who has, in essence, represented to the defendant, by their words, acts, delay, or omissions, that the covenants are no longer enforceable": *Foy v. 0933164 B.C. Ltd.*, 2022 BCSC 2046 at para. 85. In other words, an owner who has acquiesced to breaches of a building scheme may lose their right to enforce the building scheme: *Putt v. Kunetsky*, 2010 BCSC 394 at para. 41; *The Owners, Strata Plan NW1837 v. The Owners, Strata NW2794*, 2003 BCSC 1037 at paras. 28-32 [*Strata Plan NW1837*].
- [109] The Buchners state that acquiescence to a minor infringement does not prevent a party from suing in respect of a substantial infringement: *Putt* at para. 41. In all cases, acquiescence is a question of degree and because it is a question of degree acquiescence to a minor infringement does not prevent a party from suing in respect of a substantial infringement: *Putt* at paras. 41-42; *Scana Holdings*.

- [110] I do not view the Buchners' four structures, nor the other owners' numerous structures outside of the Building Envelopes, to be minor infringements. Even if the Small Building Exemption was properly authorized, some of the structures are permanent and some exceed the allowable size. They exceed the building envelope to a similar extent as the Longeneckers' Extension: the Small Building Exemption allows for structures up to 100 square feet and the Extension breaches the building envelope by approximately 67 square feet. Moreover, unlike in Scana Holdings, the Buchners have acquiesced to infringements of the very provisions at issue in this case - ss. 2(b) and 6 of the Building Scheme: Putt at para. 43. Further, the Buchners are not only engaged in "passive conduct" but have actively engaged in the very conduct they now seek to enjoin: Strata Plan NW1837 at para. 31. They are therefore not in a position to enforce these provisions.
- [111] Similarly, given my finding that the DAO designation never formally passed to the Council, it is clear that s. 1 of the Building Scheme has also not been adhered to by the owners of Nile Landing. Section 1 of the Building Scheme requires an owner to obtain the approval of the DAO before commencing "work" on a strata lot.
- [112] Despite there being no official transfer of the DAO position to the Council, it appears that the Council has continued to approve "work" on strata lots, as demonstrated by the email correspondence regarding Strata Lot 9. Moreover, given the incredibly wide definition of "work" in the Building Scheme (i.e. "any improvement of any kind whatsoever to a lot"), it is very likely that other "work" has been conducted by owners since 2017, and therefore without the approval of the DAO.
- [113] In any event, the Longeneckers attempted to get approval through every avenue available to them. They took all steps that a prudent landowner would take, apart from waiting for final approval before starting construction. The Longeneckers sought and received permission from their immediate neighbours. Mr. Longenecker also tried to address it at a Council meeting on December 6, 2022, but was told he could not raise it. He also claims to have raised the issue on February 4, 2023, prior to a Council meeting. Mr. Buchner denies that he was advised of the proposed extension at these times.
- [114] On August 9, 2023, the Longeneckers wrote a lengthy letter to the Council requesting its approval for the Extension. The Council wrote back and confirmed that they did not have the authority to hold the designation of DAO, but that nevertheless, the "spirit" of Bylaws 5.0 and 5.1(2) were complied with and the project met Strata requirements. Subsequently, the Longeneckers also sought approval from the Developers. On August 10, 2023, they sent a letter to Todsen Design and Construction Ltd., enclosing construction plans for the Extension and seeking their approval. Ms. Todsen replied advising that they were no longer reviewing applications for construction approvals in Nile Landing.
- [115] It is unfortunate that the Developers removed themselves from the responsibility to enforce exemptions without properly designating Council as the DAO. It is also unfortunate for the owners that the Building Scheme was never revised to reflect the Small Building Exemption,

despite the fact that multiple owners relied on this exemption. It is even more unfortunate that a literal reading of s. 6 of the Building Scheme is so restrictive that owners cannot obtain any exemptions after they purchased their property. Nevertheless, the Building Scheme was never amended and the problems associated with it have added to the ambiguity and confusion of what exemptions are permitted, if any, and what is the process for obtaining them. It appears that neither the majority of the owners, nor the Council itself wishes Council to be DAO. However, going forward I strongly encourage the owners to try to work together to address these issues.

[116] In these circumstances, I decline to issue a mandatory injunction or grant damages.

[117] I need not address the arguments about Mr. Longenecker being in a conflict of interest because the evidence was scant on this point and, importantly, it would not change my findings on the merits of this dispute.

[118] I dismiss the Application.

The Petition

[119] In terms of the Petition, the Longeneckers request modification or cancellation of certain portions of the Building Scheme or, in the alternative, an extension of the boundaries of the building envelope on Lot 3.

[120] The Buchners and some other respondents to the Petition argue that the Petition was filed after substantial completion of the Extension, in response to the Notice of Civil Claim filed by the Petition Respondents. They contend the Longeneckers are seeking to retroactively "legalize" the Extension by way of an order cancelling or modifying the Building Scheme. The Buchners additionally argue that the facts set out in the Petition fail to establish any of the conditions set out under s. 35(2) of the Property Law Act, namely that:

- (a) because of changes in the character of the land, the neighbourhood or other circumstances the court considers material, the registered charge or interest is obsolete,
- (b) the reasonable use of the land will be impeded, without practical benefit to others, if the registered charge or interest is not modified or cancelled,
- (c) the persons who are or have been entitled to the benefit of the registered charge or interest have expressly or impliedly agreed to it being modified or cancelled,
- (d) modification or cancellation will not injure the person entitled to the benefit of the registered charge or interest, or
- (e) the registered instrument is invalid, unenforceable or has expired, and its registration should be cancelled.

- [121] In addition to the Buchners and Longeneckers, a number of owners provided submissions regarding the Petition.[3] Twenty-six owners opposed the relief sought in the Petition. Seventeen owners consented to the relief sought in the Petition, two owners partially consented to the relief sought, and the Council took no position apart from opposing the cost order sought.
- [122] Given the animosity in the strata community and my dismissal of the Application, I believe it is prudent to ensure there is no further litigation in this matter. As a result, I am satisfied that the conditions set out under s. 35(2) of the PLA are met. In particular, the reasonable use of the land by the Longeneckers will be impeded without practical benefit to others if the Building Envelope is not modified: PLA, s. 35(2)(b).[4] Consequently, pursuant to s. 35 of the PLA I extend the Building Envelope of Lot 3 to two inches past the Extension.
- [123] Following my findings on the Application, ss. 1, 2(b), and 6 of the Building Scheme are currently either unenforceable or being consistently disregarded by the owners and Council. However, I decline to strike or amend any section of the Building Scheme at this time. There is clearly considerable uncertainty between the owners as to how best to resolve this issue and how the role of DAO should be approached going forward. The majority of the owners who filed responses opposed the relief sought in the Petition, though this was under the assumption that these sections of the Building Scheme were currently enforceable. Due to my finding to the contrary, the submissions on the Petition are insufficient for me to determine how to resolve these issues in the best interests of the Nile Landing community. I will therefore adjourn the Longeneckers' request that ss. 1 and 2(b) of the Building Scheme be cancelled or amended. If the owners are unable to make workable changes to the Building Scheme or the Bylaws within a year to address these issues, the Longeneckers have leave to come back before me to request the cancellation or amendment of these provisions of the Building Scheme.
- [124] I encourage the owners to use this time to find a consistent approach to construction outside of the Building Envelopes that is acceptable to the community. The owners should also seek to clarify what forms of "work" require approval, and who is the appropriate entity to grant that approval, be it the DAO, the Council (if they are not the DAO), or another body.

Disposition

[125] I grant the following orders:

1. With respect to the Notice of Civil Claim, I dismiss the Application.
2. With respect to the Petition, pursuant to s. 35 of the PLA I extend the Building Envelope of Lot 3 to two inches past the Extension.
3. I adjourn the request that ss. 1 and 2(b) of the Building Scheme be cancelled or amended to allow the owners to make amendments to the Building Scheme and/or the Bylaws.

4. If the owners are unable to make workable changes to the Building Scheme and/or the Bylaws within a year, the Longeneckers have leave to come back before me to request the cancellation or amendment of ss. 1 and 2(b) of the Building Scheme.

Costs

- [126] The Longeneckers have been substantially successful on the Application and Petition and are, subject to the next paragraph, entitled to their costs against the Buchners: Supreme Court Civil Rules, Rule 14-1(9).
- [127] I do not order costs against the other Petition respondents.
- [128] If there are matters relevant to costs that the parties wish to bring to my attention, they are at liberty to submit written submissions, not to exceed ten pages, within 45 days of the date of these Reasons. Any response submissions should be submitted within 15 days of the receipt of the original submissions. Any reply submissions are limited to five pages and may be submitted within ten days of the receipt of the response submissions.
- [129] The parties should submit any written submissions to me through Supreme Court Scheduling.

"D. MacDonald J."

- [1] There were 37 other Responses to Petition filed by the Strata Corporation and its various owners. Of these responses: twenty-six other owners opposed the orders sought in the Petition (Heather Bishop, Peter Bishop, Karen Caldwell, Richard Clarke, Kevin Foote, Nancy Gillies, Gerald Hatch, Audrey Harder, Robert Harder, Corley Henry, Pamela Hunken, Norman Knowles, Markus Leuder, June Linklater, Koosje Lipke, Ferris Meiers, Peter Meiers, James Muress, Terry Muress, Toni Perrino, Frank Petruzelka, Jitka Petruzelka, Murray Rule, Paul Sawyer, Deborah Shopik, and Edward Shopik). Seventeen owners consented to the orders sought in the Petition (Shirley Coleman, Timothy Coleman, Christine Des Rochers, Frederick Des Rochers, Marilyn Dickson, Dale Ciochetti, Dean Eckstrom, Leslie Excell, Trudine Excell, Deanna Later, Stephen Later, Charles Lee, William Outhwaite, Anne Outhwaite, Lorraine Phillips, Paul Phillips, and Ann Rubenstein). Two (2) owners consented only to the request for an order extending the Building Envelope of the Longenecker Property (Annette Nicholls and Brian Wess).
- [2] I am unaware why this is a higher amount than the maximum flow for a three-bedroom dwelling provided for in the Sewage Practice Manual.
- [3] Some owners added additional facts which I could not accept as this was a summary trial and the parties were restricted to the evidence they provided in their affidavit evidence.
- [4] I note that while the defendants raised multiple grounds in s. 35(2), only one of the five needs to be proven: *BC Transportation Financing Authority v. Rastad Construction Ltd.*, 2020 BCSC 2064 at para. 19.

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