

[3] TSCC 2519 is comprised of the office and retail unit owners with units located on the third and first floors respectively of this multi floor building (the “Building”). The residential units are under a separate condominium corporation. In addition, there are two other corporations that own the other areas of this building. One corporation manages the second floor, which is a freehold space, while Metro owns and manages the parking units in this Building. These corporations, excluding TSCC 2519, will collectively be referred to as the “Adjacent Corporations.”

[4] Eroltu and Campione are the owners, officers, and directors of the Emerald.

[5] Thomson is an independent contractor of Utility Advocates Inc. (“Utility Advocates”), which is a company that is also owned by Eroltu and Campione. Utility Advocates is Emerald’s tenant and occupies the Units.

[6] The alleged misconduct of the responding parties to this motion is for the period from 2017 to April 2021.

[7] For the reasons that follow, this motion is granted in part.

A. JURIDICAL HISTORY

[8] This matter has been commenced by way of a statement of claim.

[9] By interim order of Sharma J., issued on April 30, 2021, on consent of the parties, the responding parties are, amongst other requirements, ordered to comply with s. 117 of the *Act* and restrained from engaging in threatening, abusive, and harassing behaviour towards the plaintiff’s property management, board members, workers, residents, commercial tenants, lawyers, unit owners, and other individuals affiliated with TSCC 2519.

[10] Sharma J.’s order was made without prejudice and without any admission of liability on the part of the responding parties.

[11] By my order dated June 30, 2021, also made on consent of the parties, I extended the interim order of Sharma J. to the release of these reasons for decision.

B. STATUTORY AND CORPORATE FRAMEWORK FOR ANALYSIS

[12] TSCC 2519 seeks various orders against Emerald, Eroltu, Thomson, and Campione, including an order enforcing compliance with various provisions of the *Act* and s. 33 of TSCC 2519’s Declaration, as well as orders restraining the alleged injurious and/or oppressive conduct under s. 134 and 135 of the *Act*.

[13] TSCC 2519 also claims that the alleged misconduct as against its property manager violates the *Occupational Health and Safety Act*, R.S.O. 1990, c O.1 (“*OHS*”).

[14] TSCC 2519 has standing to bring this motion under to ss. 134(1) and 135(1) of the *Act*:

134(1) Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application of the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.

135(1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Superior Court of Justice for an order under this section.

[15] Subsections 17(1), (2), and (3) of the *Act* requires TSCC 2519 to enforce the *Act* and its declaration, by-laws, and rules, and similarly requires the unit owners to abide by these same declaration, by-laws, and rules.

[16] Section 119(3) of the *Act* also provides that the condominium corporation, amongst others, has the right to enforce compliance with the *Act*, together with the declaration, by-laws, and the rules of the condominium corporation.

[17] Section 119(1) of the *Act* requires the condominium corporation, unit owners, occupiers and others to comply with the *Act*, declaration, by-laws and rules.

[18] Sections 117 and 135(2) of the *Act* are the key focuses of this analysis:

117 No person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual.

135(2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter.

[19] The Court has broad remedial powers and may grant such relief as is “fair and equitable in the circumstances” under s. 134(3) of the *Act*:

134(3) On an application, the court may, subject to subsection (4),

(a) grant the order applied for;

(b) require the persons named in the order to pay,

(i) the damages incurred by the applicant as a result of the acts of non-compliance, and

- (ii) the costs incurred by the applicant in obtaining the order; or
- (c) grant such other relief as is fair and equitable in the circumstances.

Subsection 134(4) of the *Act* has no application to this proceeding.

[20] TSCC 2519 also seeks relief under s. 135 of the *Act* which is aimed at redressing oppressive conduct. This section also vests the court with broad remedial powers but offers a different avenue to that relief:

Oppression Remedy

135(2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of the unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter.

Contents of order

- (3) On an application, the judge may make any order the judge deems proper including,
- (a) an order prohibiting the conduct referred to in the application; and
 - (b) an order requiring the payment of compensation.

[21] The discretionary powers under these provisions include granting relief in the nature of restraining conduct. While these orders are similar in nature and the same in effect as injunctions, they are statutory remedies, not remedies at common law. The parties framed some of their argument under the well-known three-part injunction test under *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

[22] The issue of whether the moving party must satisfy the *RJR-MacDonald* common law test when seeking an order under s. 134(3) of the *Act* has not yet been finally determined. Some cases explicitly rely on this test, and some do not.

[23] I have reviewed this court's decisions rendered in *Toronto Standard Condominium Corporation No. 2395 v. Wong*, 2016 ONSC 8000 and *Ottawa Carleton Standard v. Friend*, 2019 ONSC 3899. In those cases, the court applied the *RJR-MacDonald* test in determining whether interlocutory injunctive relief under the *Act* was warranted in similar motions to the case at bar. Neither of these decisions provide an analysis of the applicability of the common law test for injunctive relief to s. 134 or 135 of the *Act*.

[24] On the other hand, there are several decisions of this court in which the *RJR-MacDonald* test is not referenced by the courts granting relief under s. 134 and 135 of the *Act*, including orders

restraining conduct and in the nature of declarations: see for example, *York Condominium Corporation No. 163 v. Robinson*, 2017 ONSC 2419.

[25] In *Metropolitan Toronto Condominium Corporation No. 747 v. Korolekh*, 2010 ONSC 4448, 322 D.L.R. (4th) 443, Code. J., observes at para 79, that: “The purpose of the remedial power in s. 134 is to ‘enforce compliance with ... this Act’, or with the Declaration, by-laws and rules. It is clearly a discretionary power.” See also *York Condominium Corporation No. 136 v. Roth*, 2006 CanLII 29286 (Ont. S.C.J), cited in *Korolekh*.

[26] The relief sought in this matter is a statutory remedy, not relief at common law or under the *CJA*. TSCC 2519 did not bring this motion under either s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“*CJA*”) or r. 40.

[27] In my view, it is not necessary that the moving party seeking an order restraining conduct under s. 134(3) and 135(3) of the *Act* satisfy the common law test for injunctive relief, even where that statutory relief sought is akin to an injunction. I respectfully disagree with the decisions rendered in *Wong* and *Friend* to the degree that those decisions rely on the *RJR-MacDonald* test. That said, the common law test for injunctive relief can be informative regarding when it may be “fair and equitable in the circumstances” to grant interlocutory relief under s. 134(3)(c). I am also mindful of the fact that this matter will be ultimately decided at a trial and the evidence adduced at trial and therefore any findings of fact I make are strictly for the purpose of this motion. My findings of fact also only extend to June 2021. As the parties referenced the three elements of the *RJR-Macdonald* test, I will consider this test in the alternative to my statutory analysis.

[28] Condominium corporations are governed by the declaration, by-laws, and rules of the corporation, under the overriding auspices of the *Act*. These governing documents contain information regarding the powers and responsibilities of the condominium corporation. The provisions in the governing documents must be enforced by the condominium corporation’s board of directors and followed persons located in the building. This includes the unit owners, their tenants and occupiers, guests, tenants of the common elements, and the agents, employees, and the directors themselves.

[29] The declaration is analogous to setting out the constitution of the condominium corporation; i.e., it establishes the overarching duties and responsibilities/obligations of the condominium corporation and the unit owners. The by-laws set out various governance procedures specific to the corporation, such as eligibility requirements for directors.

[30] Of note in this case, section 33 of TSCC 2519’s Declaration requires the owner of units to ensure compliance:

Section 33 – General Use

- (a) **No Unit shall be occupied or used by any one in such a manner as is likely to damage the property or that will unreasonably interfere with the use or enjoyment by other Owners of the common elements in the other Units or**

that may result in the cancellation or threat of cancellation of any policy of insurance referred to in the Declaration or in such a manner as to lead to a breach by any Owner or by the Corporation of any provision of any easements or rights registered against the property or any zoning bylaw respecting such Units, the Easement and Cost Sharing Agreement, the Parking Agreement and/or the Signage Agreement. In the event the use made by any Owner of his Unit resulted in any premiums of any insurance policy insuring the interest of the corporation being increased or cancelled, such owner shall be liable to pay to the Corporation all of such increase in premiums payable as a result thereof, **or shall be liable to pay to the Corporation all other costs or expenses it incurs as a result thereof.**

- (b) The Owner of each Unit shall comply, and shall require all of its employees and agents and the tenants, invitees and licensees of his Unit to comply with the Act, the Declaration, the Corporation's by-laws, the Rules, Easement and Cost Sharing Agreement, the Parking Agreement, the Signage Agreement and any rights and easements registered against the property. [emphasis added]

[31] Section 58 of the Declaration sets out an indemnification provision binding on the unit owners:

Each Owner shall indemnify and save the Corporation harmless from any loss, costs, damage, injury or liability to which the Corporation may suffer or incur resulting from or caused by any act or omission of such Owner, or any employee, agent, tenant, invitee or licensee of his/its Unit, to or with respect to the common elements or to any Unit or any part of the Building, except for any loss, costs, damage, injury or liability insured against by the Corporation and for which insurance proceeds are in fact payable. Each Owner shall also indemnify and save the Corporation harmless from any loss, costs, damage, injury or liability which the Corporation may suffer by reason of any breach of any Rules or by-laws in force from time to time by any Owner, his/its employees, agents, tenants, licensees, invitees, customers or occupants of his/its Unit. All payments to be made by any Owner pursuant to this Section are deemed to be additional contributions toward the common expenses payable by such Owner, and are allocated and recoverable as such.

[32] By-law No. 1, ss. 1(a) and (l), sets out the duties of TSCC 2519 as including controlling, managing, and administering the common elements and assets, and effecting compliance by the owners with the *Act*, Declaration, by-laws, and rules of TSCC 2519.

[33] It is perhaps trite to observe that when an owner opts to purchase a condominium unit, they are deemed to agree to abide by the *Act*, and the declaration, by-laws, and rules of the condominium corporation.

C. ANALYSIS: Have the responding parties, or any of them, engaged in injurious and/or oppressive conduct contrary to sections 117 and/or 135(2) of the Act, the Declaration, and/or the Occupational Health and Safety Act?

Review of the Evidence

[34] TSCC has tendered affidavits from five witnesses. Each of the witnesses have attested to having directly experienced and/or witnessed various conduct and actions, primarily in the form of email communications and physical interactions with Eroltu, Thomson, and to a lesser degree, Campione, who were acting on behalf of Emerald.

[35] The five witnesses are:

- a) Jen Chen (“Chen”), a relatively recently appointed member of the Board and unit owner since 2020;
- b) Yuan Ming (William) Liu (“Liu”), a long-standing member of the Board and unit owner;
- c) Tae Wook Kang (“Kang”), a unit owner since 2016;
- d) Hong Yang (“Yang”), also a long-time unit owner who lives in Singapore; and
- e) Dianne Ferraro, an employee/property manager for Canlight, TSCC 2519’s property management company.

[36] The responding parties each submitted affidavits:

- a) Eroltu, an owner of Emerald, which in turn owns two adjacent Units, and of Utility Advocates, which is the tenant of Emerald, occupying the Units;
- b) Salvatore Campione (“Campione”), co-owner with Eroltu of Emerald and Utility Advocates; and
- c) Cameron Thomson (“Thomson”), an independent contractor for Utility Advocates.

[37] Extensive cross-examinations were conducted.

[38] In making my findings, I am restricting them to the evidentiary record before me on this motion for purposes only of this motion. In no way should these findings be seen to be binding on the trial judge who will have the benefit of observing the witnesses, and may hear from other witnesses and additional evidence, at the pending trial.

[39] There are significant issues of credibility that must be resolved for the purposes of this motion. When faced with such credibility issues arising from a paper record, the contemporaneous

written communications, attached as exhibits, must play a critical role in determining what likely occurred.

Review of TSCC 2519's Evidence

[40] TSCC 2519's witnesses have provided evidence, often corroborated by emails written by or to Eroltu and/or Thomson, supporting their claims that they feel threatened, intimidated, and mistreated by what they call Eroltu and Thomson's threatening, accusatory, and derogatory communications and actions.

[41] The evidence in the record demonstrates that Eroltu became a persistent and demanding presence from 2017, and that Thomson joined him in the pattern of conduct from 2019. The evidence shows that Campione was copied on some of the email correspondence and was present on at least one of the occasions in dispute.

[42] Much affidavit evidence was tendered giving examples of the frequency, intensity, tone, and language used by the responding parties in their respective communications with the members of the board, unit owners and sometimes TSCC 2519's lawyers. The communications with the property manager, Ferraro, will be dealt with later.

[43] Attached to these exhibits were several examples of these communications in the form of email correspondence sent by Eroltu and/or Thomson.

Use of the Threat of Litigation

[44] In his affidavit, Liu provides firsthand evidence as the recipient and/or witness of behaviour on the part of Eroltu that Liu experienced as abusive, harassing, intimidating, and otherwise inappropriate from 2017 to 2021.

[45] For example, Eroltu threatened Liu that he would sue him personally if he ran for election to the board (after he was appointed to replace a board member who resigned). This occurred on May 23, 2017 in a telephone call with Mr. Liu and was confirmed by Mr. Lui in an email back to Eroltu. Eroltu then replied on May 24, 2017 as follows:

William,

Please deliver the signed petition to my office (308 or 309) no later than 11 AM today.

If you run for a director position, we will proceed with a lawsuit against you personally.

Fatih

[46] As a result of this threat, Liu resigned from the Board. He deposed, “I resigned specifically because I was scared and intimidated by the threats of being sued personally simply for running, as I did not have lawyers to defend me.”

[47] The board of directors has three members. At this time, one director, Leo Papageorge (“Papageorge”) had already resigned (ostensibly due to Eroltu’s activities targeting him, including being sued by him for defamation). Therefore, as a result of Liu’s resignation, the board lost quorum and a special owners’ meeting was called in June 2017 to elect two new board members. However, after reflection Liu decided to run for re-election.

[48] Liu deposed that when he let his candidacy be known, Eroltu started appearing in his store (in the building) more frequently. He deposed that Eroltu made “aggressive and intimidating statements” that the initial board was “corrupt and taking kickbacks.” Support for these alleged statements is found in emails written by Eroltu.

[49] Eroltu also repeated his threat to sue Liu when Liu determined to run for election to the board in 2017.

[50] Liu further deposed that on June 19, 2018, he received an email from Eroltu threatening criminal proceedings against TSSC’s former property managers claiming that he believed they had “misappropriated more than \$700,000 ... since May 2016.” This was followed by more visits to Liu’s store by Eroltu and also by Campione. Liu described a dispute in which Eroltu yelled at Liu, accused him of negligence, and made further threats of a lawsuit. Liu deposed that he was upset by these comments and sent an email dated October 5, 2018 banning Eroltu and Campione from his store because they “harass and try to intimidate me every time [they] step afoot in my store”:

You two, Fatih and Sam, are banned from entering my store ever again. I will contact the police if you step foot inside my store again. All I’ve been throughout this time is co-operative and reasonable yet you harass and try to intimidate me every time you step afoot in my store.

[51] This prompted the following email response from Eroltu:

Hi William these remarks are false and defamatory. You will hear from our lawyer as early as next week.

Eroltu copied his lawyer, Mr. Niksich, on this email.

[52] Further similar accusations of negligence and threats of lawsuits were made by Eroltu against Liu over various matters, including Eroltu’s contention that TSSC 2519 had agreed to compensate his company for a financial review it did that exposed mismanagement of accounts by FirstService (the former property management company) and eventually lead to the commencement of litigation against FirstService and the three adjacent corporations. This litigation is ongoing.

[53] Eroltu claimed at the hearing that he was not interested in being paid for the work his company had done. However, an email dated December 7, 2018 contradicts that position. In it, Eroltu asserted that he would be sending an invoice for his costs to complete his findings.

[54] In a mass email dated January 2021 (sent to all of the approximately 100 unit owners and members of the corporation), on which both Liu and Kang were copied, Thomson and Eroltu threatened to sue the board, management, lawyers, and any other unit owners who may support them for “civil conspiracy.”

[55] Chen deposed that shortly after she was appointed to replace board member, Papageorge, the responding parties threatened in an email to sue her with the other board members for “civil conspiracy,” to use the phrase written by Eroltu. She deposed that she almost resigned from the board as a result but resolved to stay on to assist with TSCC 2519’s affairs. Liu also received this email, dated January 28, 2021:

Canlight, Mr. Barkin, Ms. Ferraro, Mr. Lee, Mr. Liu, Ms. Dai, Ms. Chen and Mr. MacGregor [counsel to TSCC 2519]: it would appear, judging from the timing of these matters as well as other factors, that you are engaged in a **conspiracy**, acting in **bad faith**, dissimulating your personal and private motives, **fraudulently misrepresenting** these motives as the authenticated intentions of TSCC 2519 itself... In light of these considerations, Emerald PG holdings Ltd (“EPGH”), of which Mr. Eroltu is both agent in principal, hereby cautions you not to proceed with this plan... You have until February 15, 2021 to do so. Barring a cessation of your current course of action, EPGH will bring an action against you in the Superior Court of Ontario, and will do so in the matter entirely exclusive of anything bearing on your distinctly separate, and here technically irrelevant roles as agents of tea SCC 2519. It is also possible that Canlight, Mr. Barkin, Ms. Ferraro, Mr. Lee and Mr. MacGregor will face justified complaints which EPGH will lodge with their respective employers, and (in the case of Canlight, Mr. Barkin, this Ferraro, Mr. Lee) with that CMRAO. [Emphasis in the original]

[56] Chen deposed that the next day, following the dissemination of the notice of the next Annual General Meeting (“AGM”) (sent on January 26, 2021), scheduled for March 2, 2021, she was copied on a mass email dated January 29, 2021 and sent by Eroltu, which she felt was “extremely lengthy, aggressive and threatening.” This mass email threatened to sue the board members for “civil conspiracy” and any unit owners who supported the board. Chen had been on the Board for six days at that point in time. The email reads in part:

It should have been already recognized or at least understood that I DO NOT BLUFF.

It is very important for all the parties to note that we are in the process of identifying every single person or legal entity who took part directly or indirectly in such conspiracy including some of the unit owners. They know who they are.

As opposed to your false perceptions, you still did not understand the outcome of your actions. Before Emerald PG Holdings Ltd. proceeds with legal action against Canlight Property Management and each and every one of the Current and Former Board of Directors for the tort of conspiracy and fraudulent misrepresentations, you need to understand that there are five elements to succeed on a claim for the tort of conspiracy and fraudulent misrepresentations:....

For now, I will have to leave it up to you to figure out exactly and conspire again with Current/Former Board of Directors as well as our Corporate Lawyer, whoever he is and whoever holds a Law Society of Ontario #66369G. [Emphasis in the original.]

Lui was also copied on this email, and deposed that following the delivery of this email, the Board began receiving reports from various unit owners that they were fearful of Eroltu and felt threatened that Eroltu would sue them if they did not cooperate with his goals.

[57] Kang deposed: “Since being a unit owner at TSCC 2519 [since June 16, 2016] I have witnessed and been victim to consistent and repetitive intimidation, pressure, and threats of litigation originating from the Defendants. In particular, these threats have come from Messrs. Fatih Eroltu and Cameron Thomson.”

[58] Kang deposed that on August 16, 2020, Thomson sent the following email to all of the unit owners:

Leo,

This is, sadly, how we talk to YOU. You have messed up in so many ways, so many times, and never owned up or apologized once... We talk to YOU as we do because we've lost all hope of your even HEARING us... On the other hand, if our efforts are met with lies or stalling tactics, **I am also capable of giving trouble-makers an effective dressing down. And threats of litigation, when set forth, are certainly effective. We know this from experience.** [emphasis in the original]

[59] Kang deposed that he “would be too afraid to run as a Board member in this environment.”

[60] There is substantial documentary evidence to support the claims of the witnesses who were also threatened with lawsuits by Eroltu and/or Thomson on behalf of Emerald.

[61] In fact, one such lawsuit was commenced by Eroltu alleging defamation against Liu, Papageorge, and Kang, another unit owner. The defamation lawsuit is ongoing.

[62] Individuals are entitled to issue a lawsuit for wrongs they have alleged to have suffered. However, it is an abuse of process to issue a lawsuit for an ulterior purpose, like an intimidation tactic to prevent others from exercising their own rights, such as seeking election to a board of directors.

[63] Based on the evidence, it appears that Eroltu used the threat of bringing legal proceedings with the intent of intimidating others. This includes his threat to sue the board members, including Chen and Liu, for “civil conspiracy” if they did not comply with his (and by extension, Emerald’s and Utility Advocates’) demands.

2020 Proxy Dispute

[64] Kang deposed that Eroltu and Thomson had solicited a proxy from him to discuss an unexpectedly high increase in common expense fees (resulting from the subsequently discovered alleged mismanagement by FirstService). He agreed with that. However, he subsequently discovered that the proxy that he signed was also to be used at the special owners’ meeting to be held on August 19, 2020 (the “special owners’ meeting”) for a vote to remove two directors (Liu and Chen) and to elect Eroltu and Thomson in their place. This is corroborated by an exchange of emails and a signed Requisition form.

[65] Kang did not agree with the need for a special owners’ meeting and demanded that the proxy be returned—it was. However, this raised concerns for Kang that other Chinese speaking unit owners might also have been deceived by signing this proxy. Yang had a similar proxy experience regarding the special owners’ meeting. He produced an email dated July 13, 2020 from Eroltu with an attachment showing a document that was purportedly signed by Yang for the removal of the board. Yang deposed that this is not his signature.

[66] Chen deposed that she too had been a victim of the proxy practice promoted by Eroltu. She and her law partner bought unit 307 (through a holding company) in February 2020.

[67] In or around late July 2020, she discovered that her contractor had been asked to sign a document which he had been led to believe was for the renovations he was engaged in at her new unit and to lower the maintenance fees. Her contractor speaks Chinese and did not understand English, so he could not read the proxy form. Chen did not authorize her contractor to sign the proxy on her behalf. Second, the proxy was to call the special owners’ meeting to remove two members of the board and replace them with Eroltu and Thomson which is something that Chen obviously did not support.

[68] When Chen submitted her own candidacy for election to the board in 2020, she was invited by Eroltu to meet with him. This meeting occurred on August 6, 2020 in Eroltu’s office. At this meeting, Eroltu “abruptly demanded that I withdraw my candidacy for the Board.” He warned her from speaking to the “ring leader” of the opposition if she knew what was good for her and that she had to choose, saying “[E]ither you are with me or you are against me. I am not someone you want to go against”.

[69] Chen deposed that she left this meeting feeling intimidated by his aggressive manner and the fact he was a big man.

Workplace Harassment

[70] Ferraro's office is on the same floor as Emerald's Units.

[71] Ferraro deposed that since May 2019 she has experienced "a long standing and ongoing pattern of intimidation, bullying and harassment from the Defendants, which has escalated over the years." In her affidavit, she provided various examples, many of which centered around Thomson or Eroltu banging on the door to her office until she would relent and open it, only to be asked excessive demanding questions about various matters. If she refused to open her door, then the telephone would begin ringing. As a result of this conduct, a security system was installed on her door, permitting her to see who is on the other side of her door.

[72] On May 11, 2020, she received emails from Thomson and Eroltu advising her that she was being monitored closely, she was not keeping proper office hours, and threatening to report her. However, the Board had authorized her to work from home whenever practicable during Covid-19. Thomson and Eroltu did not accept this explanation and sent a further email on June 10, 2020 challenging Ferraro's boss on the issue of her hours in the office.

[73] Ferraro deposed that on November 4, 2020, she felt physically intimidated by Thomson in an elevator in the building. She deposed that he "aggressively" asked her if she was ready for another CAT fight (Condominium Authority Tribunal) over records requests, and that he would be coming after them for the handling of the special owner's meeting in August 2020.

[74] A similar incident was described by Ferraro as having occurred in the elevator on March 25, 2021. She deposed that she felt physically afraid of Thomson, and she wrote an email to her superior, Mr. Barkin, immediately thereafter. The email reporting this incident was attached to her affidavit.

[75] Another dispute erupted between the property managers and Thomson. Thomson accused Ferraro and Mr. Barkin of inserting themselves between the unit owners and Emerald. He sent an email on December 17, 2020, in which he was sarcastic and accusatory. The tone of the email is both condescending (purporting to correct Mr. Barkin's grammar) and inflammatory. He characterized his emails as "fundamentally missives from EPGH [Emerald]" and added "[p]lease bear this in mind". He stated that the "appearance of grave impropriety in the way that voting was handled on the August 19, 2020 [special owners' meeting] remains. So too does our considerable doubt in regard to your good faith."

[76] Eroltu also wrote:

A property management service provider who would collude with the condo corp's counsel and Board members to prevent ballots from being cast at a special owners' meeting would, no doubt, say just about anything. I'm certainly not asserting outright that you or Canlight are such a service provider, or that you did that.

[77] On April 23, 2021, Ferraro received an email from Eroltu, copied to the unit owners and other members of the corporation, in which he outright accused her of defrauding TSCC since May 12, 2019 for claiming reimbursement of her parking fees. This was unfounded.

[78] Ferraro also deposed about an aggressive incident with Thomson on January 8, 2021. Ferraro accompanied a female cleaner into the men's bathroom to assist her. They knocked on the washroom door to see if it was occupied and received no response. They entered and, unfortunately, Thomson was there. They immediately left, and Ferraro went back to her office and closed her door.

[79] Thomson began yelling at them in the hallway, and then banged loudly and repeatedly on her door demanding that she open it. She deposed:

I did not answer the door, as I was afraid of how he would confront me physically. He then began calling my office line several times, and I did not answer. When I left work to go home I felt very unsafe left work early feeling frazzled. Attached as exhibit C is a copy of the email I sent at 11:18 am on January 8, 2021 regarding this incident.

[80] Ferraro now requires a security guard to accompany her to her car after work.

[81] She deposed that “over the course of my employment and management of TSCC 2519, I have felt continuously singled out and intimidated by the Defendants. They have repeatedly threatened personal sanctions, lawsuits, that made many allegations to report me personally the various regulatory bodies. The often copied many unit owners to these emails, it is often very difficult to experience on a daily basis working for TSCC 2519. It disrupts my ability to focus on my other tasks, and makes me feel upset, intimidated and sometimes afraid of the defendants after my shifts.”

[82] This gives rise to a concern under the *OHSA* and TSCC 2519's obligation to provide a safe, harassment free workplace for its property managers.

[83] Ferraro's account is supported by various emails from Thomson and Eroltu and by her own emails sent contemporaneously with the events described in them, attached as exhibits to her affidavit.

[84] Liu deposed that he witnessed an incident where a customer was about to walk into the food court washrooms in the building, while a female cleaner was still inside the washroom cleaning. He heard Thomson called the employee a “prostitute” and added that she was about to “service the customer.”

[85] Similar reports of being subjected to harassment and having witnessed inappropriate conduct by Thompson and Eroltu were echoed in the affidavits of Kang and Yang, supporting the accounts in the affidavits of Liu, Chen, and Ferraro. Their accounts are also supported by emails from Thomson and Eroltu attached as exhibits.

Pattern of Harassing, Intimidating, and Inflammatory Email Communications

[86] Kang deposed that he has been copied on various emails sent by Eroltu and Thomson, (referred to as “mass emails”), which are sent to all the unit owners, board members, property managers, and sometimes TSCC 2519’s lawyers. Kang characterized these mass emails as “long, threatening and intimidating” and as accusing the board, management, lawyers, and other unit owners of committing fraudulent conduct, threatening to sue them, and calling other unit owners “shameless liars, backpeddlers.” The latter was corroborated by an email dated July 26, 2020 sent by Eroltu. He sets out a summary of the types of emails he has received at para. 4 of his affidavit.

[87] Some of these emails were about former board member, Papageorge. Demeaning and derogatory emails to or about Papageorge were sent to the unit owners. For example, Liu deposed that Thomson called Papageorge the “Timbit Man” in front of 99 unit owners, and accused him of being a liar and defrauding TSCC 2519. Papageorge is the manager of a Tim Horton’s franchise located in the building. Liu then attached an email dated August 18, 2020 from Thomson to Papageorge, forwarded by Papageorge to the unit owners (including Liu):

For the record, Leo – I didn’t call you the “Muffin Man.” I only pointed out that if the nursery rhyme figures of the Muffin Man and the Pie Man, or the cultural standards, once upon a time, embodied by the Milk Man and the Post Man, are not problematic, then why should the charming figure of the Timbit Man be any different?

You are a Timbit Man, aren’t you? Surely you take pride in your occupation.

[88] On August 7, 2020, Eroltu sent an email to Yang, which was sent just prior to the August 19, 2020 special owners’ meeting:

If you do not cease making false accusations and/or spreading lies about me whom you have never met or spoken, I will find you in Singapore where you hide and drag you into my cold and dark world. When you and I stand in front of a presiding judge, TRUST me, it is not the place you would want to be.

Once I obtain a court judgment against you, I will garnish and cease all your assets. I really like your tenant, Peter Zhang. You never know, I will be his LANDLORD one day when the time eventually arrives.

[89] The communications, in particular, by Thomson and Eroltu, then intensified and escalated following the notice sent out by management on January 26, 2021, which gave notice of the next AGM to be held on March 2, 2021. On the agenda was a proposal to amend TSCC’s By-law to prevent more than one person from any unit from running for the Board. The Board of Directors has only three members.

[90] The motivation for the amendment was stated to be a concern that one unit could control the majority of the board if two individuals associated with that unit ran and were elected. Given the timing of this proposal, following the increased intensity in the communications by Thomson and Eroltu after their recent failed attempt to have the two board members removed from the Board

and replace them, it is a reasonable inference that the Board's motivation in proposing such an amendment was with Emerald in mind.

[91] The affidavit material is replete with these types of missives issued by Eroltu and/or Thomson on behalf of Emerald. Further examples of these inflammatory emails are cited at paragraphs 15 and 19 of TSCC 2519's factum and supported by contemporaneous documents attached as exhibits to the various affidavits.

Responding Evidence

[92] Eroltu and Thomson point blank deny these characterizations of their conduct and actions.

[93] Eroltu swore a detailed affidavit and a brief supplementary affidavit. In them, he denies certain specific incidents. However, much of his main affidavit is devoted to explaining why he believes his actions and communications were appropriate and justified. Attached to Eroltu's main affidavit were excerpts from a private WeChat that reveals some disturbing racial slurs relative to Eroltu. However, this exhibit is hearsay as Eroltu was not a party to this WeChat and this document was not authenticated. Furthermore, the focus of this motion is on the appropriateness of Eroltu's communications and conduct, though such events, if proven, could provide relevant context.

[94] Thomson's affidavit is much briefer. In it, he denies that he mistreated Ferraro in any way and denies any confrontations with her. He does admit that he acted solely as agent for Emerald with respect to the matters in issue on this motion and that his actions were "conducted at the sole direction of Fatih Eroltu; and arose from my independent contractor relationship with Utility Advocates."

[95] Campione, in a very brief affidavit, deposed that he has no knowledge of any of the alleged misconduct.

[96] Campione deposed in his affidavit that he was not involved in "any matters which TSCC 2519 alleges support their claims against me personally." However, Liu's affidavit attaching his email exchange with Eroltu and Campione of October 5, 2018, in which Liu "banned" Eroltu and Campione from his store after the altercation, and Eroltu threatened defamation suit against him in response, contradicts that assertion.

[97] It is noteworthy that the responding parties have not proffered any affidavits from other unit owners in support of their position that their conduct was not abusive and was justified, or that they support Emerald, Eroltu, Campione, and/or Thomson's behaviour and conduct.

[98] Furthermore, the intimidating, sarcastic, inflammatory, and sometimes abusive language used by Eroltu and Thomson in some of their emails cannot be justified by them.

Shibley Righton Letters

[99] The responding parties put considerable weight on seven letters written by TSCC 2519's law firm, Shibley Righton LLP between July 30, 2019 and January 18, 2021. Their contention is that if there had been truly intimidating and abusive conduct by the responding parties, it would have been addressed in these letters and accompanied by demands to cease and desist.

[100] In my view, the letters do not support the responding parties' contention. The letters provide responses to specific matters raised by the responding parties and conveys the Board's concerns and directions. They tend to end with an invitation to discuss the subject matters further.

[101] They are written in a constructive manner, with a view to trying to resolve conflict.

[102] Furthermore, there are references in the letters to problematic conduct by the responding parties. For example, the July 30, 2019 letter references "several serious allegations against the Board members" that "may be defamatory towards the board members".

[103] In the letter dated June 15, 2020, counsel writes that "your threats of legal action are without merit and the Corporation rejects these threats and demands in their entirety."

[104] In their letter dated September 14, 2020, counsel writes that "[y]our actions demonstrate a bad faith effort to intentionally cause harm to the Corporation" and "you have intensified the tone in your accusations".

[105] The letters identify much of what is now at issue in this motion, including the "lengthy and accusatory emails to the Board and property management" and false and defamatory allegations of misconduct against the Board and Canlight. Eroltu is also directed to refrain from engaging in monitoring of Ferraro's hours of work, which is "unnecessary and unwelcome."

CAT Proceedings

[106] The defendants also point to a tribunal decision from the CAT, in which one of Emerald's requests for documents was vindicated resulting in a penalty and costs being assessed against TSCC 2519 in favour of Emerald.

[107] On the other hand, TSCC 2519 points to a CAT decision in which Thomson is admonished for not having followed the tribunal's order. In that recently released decision, the tribunal identified that Thomson had authored multiple applications under the guise of other unit owners and created email addresses in their names that he controlled. At paras. 36, 38 and 39 of the decision the CAT wrote:

36: Although Mr. Thompson [sic] refused to identify himself as the author of emails from parties requested by tribunal staff, the tribunal has concluded that Mr. Thompson is monitoring these email (Gmail) addresses that appear to have been created for the sole purpose of receiving emails related to these CAT cases. It is clear that even after being told he could not act in the cases, he wrote the applicant's responses to the respondent's motions. The proposed authorization for Mr.

Thompson to act as a communications liaison demonstrates that Mr. Thompson has no intention of removing himself from the cases.

38: The facts outlined in this decision establish that Mr. Thompson has not followed the Tribunal's instructions. These actions raise a concern about the abuse of the tribunal process. It is therefore appropriate for his involvement in CAT cases to be limited.

39: I am concerned that Mr. Thompson's conduct has demonstrated a blatant disregard for the rules and authorities of the Tribunal. However, he has a valid connection to the Emerald which may support him acting as its agent. I am prepared to allow him to represent it in the future with the clear expectation that he will follow the direction and orders of the tribal communal throughout.

D. CONCLUSION

Did the Responding Parties' Conduct Violate s. 117 of the Act and s. 33 of the Declaration?

[108] The responding parties say that they have a legitimate right to have done the things they have. That may be so providing it is in accordance with the *Act*, Declaration, by-laws, and rules of TSCC 2519. As a unit owner, Emerald has a right to make appropriate requests for records and to bring legitimate proceedings before the CAT and the Condominium Management Regulatory Authority against the property manager (Ms. Ferraro), Canlight (the current property management company), and TSCC 2519 itself. Eroltu has a right to bring a defamation action against individuals who happen to be current or former board members and a unit owner.

[109] As a unit owner, Emerald has the right to scrutinize the financial records of TSCC (within the limits prescribed by the Declaration, by-laws, and rules). In fact, as a result of its scrutiny, a possible mismanagement of accounts by the former property management company, FirstService, was discovered. TSCC has since commenced a lawsuit against FirstService and the adjacent corporations related to this discovery after having its own forensic audit conducted.

[110] The various proceedings brought by various of the responding parties have not been dismissed as vexatious or an abuse of process. In fact, some of the record requests have been validated by CAT—one resulted in a penalty of \$1000 and costs of \$200 by TSCC in favour of Emerald.

[111] They also have the right to request that the common elements be in good order; including inquiring as to when the "handicap" washroom facility would be fixed.

[112] The problem is the hurtful and unrelenting manner in which the responding parties have made and pursued their various requests and demands, and the apparent use of the threat of litigation to intimidate board members and unit owners.

[113] I have considered the affidavit evidence and the associated cross-examinations, as well as the documents attached as exhibits. While the cross-examinations of the TSCC 2519’s witnesses exposed some weaknesses, overall the witnesses held up on the essential matters. Furthermore, the emails produced that were contemporaneous with many of the incidents deposed to were largely written by Eroltu and Thomson and support the general narratives provided by TSCC 2519’s witnesses. In addition, the affidavit of Kang is independent in the sense that he has no interest in the proceeding except as a unit owner. He is not the subject of the defamation litigation brought by Eroltu. His evidence is compelling. Additionally, Yang was not cross-examined on his affidavit. The responding parties submitted that I should discount Kang and Liu’s evidence because they are defendants in Eroltu’s defamation action. However, those proceedings are ongoing, and I do not draw any inference against Kang and Liu’s credibility on that basis. The mere fact that they are adverse in interest to Eroltu, without more, is not a sufficient ground to discount their evidence on the basis of bias.

[114] On the other hand, the responding parties have not produced any affidavits from any other unit owner, even though in their evidence they state that they are very supported by many of the unit owners in the building.

[115] The evidentiary record tendered by all parties contained some hearsay on controversial issues that go to the heart of this motion—that is allegations of misconduct and responses to it. That hearsay is not accorded any weight in my analysis.

[116] However, stripped of the hearsay evidence on controversial (material) matters, there is a credible evidentiary basis supporting TSCC 2519’s motion. The evidence supports, notwithstanding the effective cross-examination of TSCC’s deponents in exposing some of the frailties of the affidavit evidence, a pattern of conduct from in or around August 2019 that has escalated over the past two years to a high point in 2021.

[117] In my view the documentary record supports the general narrative provided by TSCC 2519’s evidence.

[118] Accordingly, where there is a conflict in the evidence as between the witnesses of TSCC 2519 and that of the responding parties, I favour TSCC 2519’s evidence.

[119] However, the issue is whether this conduct violates s. 117 of the *Act*.

[120] Section 117 of the *Act* prohibits any “person” from permitting a condition to exist or to carry on an activity in a unit or within the common elements (such as the lobby) if the condition or activity is likely to damage the property or cause injury to an individual. In this context, “injury” includes psychological harm that is beyond a trifling nature: see *Korolekh*, at para 71.

[121] In *Korolekh*, Code J. found that the statutory duty to refrain from engaging in activities likely to damage the property or cause injury to an individual was breached by acts of physical assault (including the use of the respondent’s dog), the use of racist and homophobic slurs, and

repeated incidents of mischief to property (such as “egging” other units): *Korolekh*, at paras. 70-72.

[122] Of particular relevance to the conduct at hand, Code J., at para. 71. wrote,

In addition, there is a great deal of evidence of racist and homophobic slurs, some of which include shouted threats of “bodily harm” that fall within the meaning of s. 264.1 of the *Criminal Code*. It is noteworthy that “bodily harm” has been held to mean “any hurt or injury” and “to include psychological harm”, provided it is more than “transient or trifling”.

Furthermore, at para. 71, Code J. wrote that the nature of the respondent’s “threats, especially when combined with the use of her large aggressive dog, is to intimidate and instill fear,” which supported a finding of a breach of s. 117 of the *Act*.

[123] In *Robinson*, the unit owner was found to have engaged in a daily ritual of hurling abusive language, both verbal and through emails aimed at the condominium corporation’s staff. The court found, at paras. 9 and 10, that verbal and written forms of abuse constituted “injury to an individual” within the meaning of s. 117 of the *Act*. See also *Carleton Condominium Corp. No. 291 v. Weeks*, 2003 CarswellOnt 1013, at paras. 25-34.

[124] The burden of proof is on TSCC 2519 to prove, on a balance of probabilities, that the conduct ascribed to Emerald, Eroltu, Thomson, and Campione was likely to give rise to psychological harm that is of more than a trifling or transient nature, or unreasonably interfered with the use or enjoyment of the units and or common elements by the other unit owners. The latter includes the inability of a unit owner to fully participate in the condominium corporation’s affairs, such as running for the board of directors.

[125] The evidence proves, on a balance of probabilities, that Thomson and Eroltu, on behalf of Emerald, have engaged in a pattern of conduct that is intimidating, bullying, and ultimately abusive, which has thwarted the ability of the board of directors to govern as they were elected to do. Again, the substance of their persistent complaints, demands, and requests for records may all be legitimate but the manner in which they are advocating for Emerald’s rights as a unit owner is not acceptable and contrary to Emerald’s obligations under s. 117 of the *Act* and s. 33 of the Declaration.

[126] The constant threats of litigation against former, current, and prospective board members constituted an unreasonable interference with the use and enjoyment of the units and common elements of the Building which includes the right to participate in the governance of TSCC 2519 without fear of reprisal.

[127] Furthermore, I accept the evidence of Chen, Kang, and Liu that they reasonably experienced fear and intimidation in the Building beyond a trifling nature as a result of Eroltu and Thomson’s activities, and that this fear and intimidation also constitutes an unreasonable interference with their use and enjoyment of their units and common elements.

[128] In addition, the persistent pattern of hostile and aggressive email communications by Eroltu and Thomson, together with the various incidents of physical intimidation in the form of Eroltu and Thomson’s raised voices, and their sometimes close physical proximity with Chen and Ferraro in closed environments (Eroltu’s unit and the elevator), which reasonably gave rise to an apprehension of fear, is conduct that causes injury with a psychological harm that is beyond a trifling nature, such that an interlocutory compliance order is warranted.

[129] Eroltu and Thomson, acting as agents for Emerald have acted in a manner that is in violation of s. 117 of the *Act* and s. 33 of the Declaration.

[130] I am also satisfied that the injury constitutes irreparable harm. In *Wong*, Akbarali J. found that the unit owner’s conduct in that case amounted to a pattern of escalating behaviour that was threatening and dangerous, and therefore, amounted to irreparable harm. That behaviour consisted of, for example, making complaints that the prior superintendent was a “bad guy” and had done “scary” things to her. The unit owner had also caused a disturbance at the AGM of the condominium corporation, had left threatening voicemail messages towards a staff member, and on one occasion had violently banged on and kicked the door to the property office resulting in enhanced security being hired: *Wong*, at paras. 7-10, 32-33.

[131] In addition, I find that the balance of convenience favours TSCC 2519. Compliance orders require that individuals comply with the *Act*, and the condominium corporation’s Declaration and by-laws. Interlocutory injunctive orders will preserve the status quo pending the hearing of the summary procedure trial. In that regard, it is noted that a tight timetable for the trial has been established, and the action is to be set down by December 2021.

Does the Conduct Violate the Occupational Health and Safety Act?

[132] Section 1(1) of the *OHSA* defines workplace harassment as:

- (a) engaging in a course of vexatious comment or conduct against the worker in a workplace that is known or ought reasonably to be known to be unwelcome,

[133] In *Wong*, the threats, banging on the office door, and related conduct by the unit owner against the condominium corporation’s staff constituted workplace harassment under the *OHSA*: *Wong*, at para. 39.

[134] In *Robinson*, at paras. 12 – 13, the unrelenting nature of the excessive verbal and written forms of abuse made by the unit owner to the condominium corporation’s employees was also found to constitute workplace harassment under the *OHSA*. In that case, at para. 9, there was an absence of violence or physical abuse, but the unit owner’s “daily verbal barrage has made work life intolerable for the Applicant’s staff.”

[135] In *Ottawa Carleton Standard v. Friend*, 2019 ONSC 3899, at para. 116, the unit owner was found to have committed actions that constituted workplace harassment under the *OHSA* by:

- (a) making unwarranted allegations of misconduct against the Property Manager;
- (b) applying physical force without the consent of the Directors;
- (c) making constant aggressive emails and complaints to the condominium corporation's staff; and
- (d) corresponding with the property manager as an employee of the condominium corporation, which contained "insults, ..., name-calling, coarse language and rudeness" as well as his verbal abuse of such employees.

[136] The verbal abuse, door banging, physical intimidation, accusations of wrongdoing, shouting, and micromanaging of Ferraro (without authority) by Thomson and Eroltu constitute workplace harassment within the meaning of the *OHS Act*. The conduct ought to have been known by them to be unwelcome to Ferraro. The letter from Shibley Righton LLP dated June 15, 2020 made this explicit.

Does the Conduct Constitute Oppression under s. 135 of the Act?

[137] TSCC 2519 submits that the described conduct of Eroltu, Campione, and Thomson, on behalf of Emerald, is or threatens to be oppressive or unfairly prejudicial to it and/or unfairly disregards the interest of the condominium corporation (s. 135(2) of the *Act*).

[138] In *Durham Condominium Corporation No. 45 v. Leslie Arthur Swan*, 2012 ONSC 3441, at paras. 64 - 65, the court stated the following:

[64] The conduct complained of in Section 135 must fall under one of three categories:

- (1) To be oppressive it must be coercive or abusive, or conduct amounting to "an abuse of power which results in an impairment of confidence in the probity with which the company's affairs are being conducted."
- (2) Unfair prejudice "has been found to mean a limitation or an injury to a complainant's rights or interests that is unfair or prejudicial."
- (3) Unfair disregard is "to ignore or treat the interests of the complainant as being of no importance." (*Hakim v. Toronto Standard Condominium Corp. No. 1737* [2012] O.J. No. 21 Ont. Superior Court of Justice paras. 32-35)

[65] The test for oppression under the *Act* must meet two requirements. First, it must be demonstrated that there has been a breach of reasonable expectations. Only if that test is met, must the court consider whether the conduct complained of amounts to "oppression," on "unfair prejudice," or "unfair disregard."

[139] It is within the reasonable expectations of TSCC 2519 that Emerald, and its principals and tenant, will abide by the provisions of the *Act* and its Declaration and by-laws. Indeed, these are mandatory requirements.

[140] Under s. 135(3) of the *Act*, upon determining that the conduct of the unit owner violates s. 135(2), the court may issue an order prohibiting the impugned conduct and may issue an order requiring the payment of compensation. Again, the provision vests the court with a remedial and broad discretion to remedy the violation.

[141] The conduct of Emerald, through its agents Eroltu and Thomson, unfairly disregarded the interests of TSCC 2519 and, in particular, its board of directors by interfering in the board's governance role. Furthermore, Emerald has unreasonably interfered with TSCC 2519's ability to seek and retain board members. Emerald has also unreasonably interfered with TSCC 2519's ability to provide a safe workplace for its property managers, and with its employment relationship with those property managers, and in particular with Ferraro.

What is the Appropriate Remedy?

[142] The court is given a wide discretion in fashioning the appropriate remedy to enforce compliance with s. 117 of the *Act*, the Declaration, by-laws and rules of a condominium corporation: see for example *York Condominium Corporation No. 137 v. Hayes*, 2012 ONSC 4590, at paras. 19, 49.

[143] However, compliance orders and the related relief must be “responsive” and “proportionate” to the conduct alleged (*Toronto Standard Condominium Corp. No. 1724 v. Evdassin*, 2020 ONSC 1520 at paras. 64, 66, 67 and 68).

[144] There is no doubt on the record that Eroltu and Thomson were agents of Emerald in the course of the conduct giving rise to this motion. There was no suggestion to the contrary during submissions. In fact, Thomson was very explicit about his role as agent in his affidavit. Eroltu, through his many emails, also made it clear that he was speaking and acting on behalf of Emerald.

[145] TSCC 2519 was justified in seeking a compliance order against Emerald, Eroltu and Thomson.

[146] The evidence against Campione, however, does not demonstrate, at this stage of the proceedings, the same level and intensity of misconduct attributable to Eroltu and Thomson. I find that it falls short of establishing that Campione's conduct violated s. 117 and s. 135 of the *Act*, for purposes of this interlocutory motion.

[147] TSCC 2519 is also seeking an interlocutory order restraining the responding parties from acting as board members of TSCC 2519 until this action is resolved, and until Eroltu's outstanding defamation action against Liu, Papageorge, and Kang is resolved. However, I do not think this is appropriate relief at this stage of the proceedings. None of the responding parties are currently directors, nor are they currently running for election.

[148] In the event that any of the responding parties seek election, they will have to satisfy the eligibility requirements for prospective board members as set out in TSCC 2519's By-laws. In the event there is any impropriety, TSCC 2519 has remedies it can pursue.

[149] TSCC 2519 also seeks an interlocutory order restraining the responding parties from soliciting proxies of unit owners for calling special owners' meetings. Based on the evidence, I find that this would be fair and equitable. There is compelling evidence before the court that the responding parties (with the exception of Campione) likely have exerted undue influence and/or engaged in less than transparent methods, to secure proxies from unit owners to procure a special owners' meeting in the recent past.

[150] Accordingly, I will be granting relief under s. 134(3) of the Act as articulated in the Ruling portion of these Reasons for Decision.

[151] In my view, the impugned conduct would have mandated the same relief under s. 135(3) against Emerald, as I am granting under s. 134(3) as against Emerald, Eroltu and Thomson. Therefore, the relief need not be granted twice.

E. COSTS

[152] Where individual unit owners cause the condominium corporation to incur unnecessary expenses (such as incurring legal fees to enforce compliance with the *Act*), the condominium can claim those costs back from the individual unit owner on a full indemnity basis as a common expense collectable against that unit, if the declaration provides that right or where provided in the *Act* itself.

[153] Section 58 of TSCC 2519's Declaration provides that each unit owner is responsible for indemnifying the corporation for all damages and losses suffered due to an act or omission of that unit owner.

[154] The courts will generally enforce this type of indemnity clause, barring special circumstances, in part in recognition that it would be unfair to burden the other unit owners with this expense.

[155] As no special circumstances have been raised, the costs of this motion will be fixed, payable on a full indemnity basis against Emerald, as the unit owner.

[156] Furthermore, under s. 58 of the Declaration, the costs will be collectable as a common expense against the Units (*Friend*, at paras. 135, 146).

E. RULING

[157] Since that interim order under s. 134 of the *Act* was granted by Sharma J., TSCC 2519's concerns regarding the alleged conduct of the responding parties has lessened and the AGM (that

was postponed due to concerns by TSCC 2519 that the responding parties might unduly disrupt the meeting) was able to occur just prior to the hearing of this motion.

[158] Accordingly, the interim order has been effective.

[159] I find that in the circumstances of this matter, the fair and equitable relief is to grant the following orders:

- (a) An interlocutory order continuing the interim order of Sharma J. restraining the responding parties, Emerald, Eroltu and Thomson, from any further acts of harassment, intimidation, threats, bullying or other similar conduct as against the Board members, Unit Owners, and the staff, independent contractors, agents, and employees of TSCC 2519 including, but not limited to, Dianne Ferraro, contrary to s. 117 of the *Act* and s. 33 of the Declaration;
- (b) An interlocutory compliance order as against Emerald, Eroltu and Thomson requiring them to comply with the *Condominium Corporation Act*, TSCC 2519's Declaration, by-laws, and rules, and in particular, s. 117 of the *Act*, pursuant to s. 134 of the *Act*;
- (c) An interlocutory order restraining the Emerald, and restraining Eroltu and Thomson, acting as agents for Emerald, from soliciting proxies of unit owners for owner's meetings.
- (d) Costs of this motion are payable by Emerald on a full indemnity basis pursuant to s. 58 of the Declaration. These costs may be added to Emerald's common expenses.

[160] If the quantum of costs cannot be agreed upon, then TSCC 2519 shall deliver its cost outline and written submissions, not to exceed 3 pages in length within 20 days from the release of this decision, and the responding parties will have 10 days thereafter to deliver their cost outline and responding costs submissions not to exceed 3 pages in length.

Justice S. Vella

Released: November 01, 2021

CITATION: TSCC 2519 v. Emerald PG Holdings et al., 2021 ONSC 7222
COURT FILE NO.: CV-21-00656613-0000
DATE: 20211101

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Toronto Standard Condominium Corporation No. 2519

Plaintiff/Moving Party

– and –

Emerald PG Holdings Ltd., Mehmet Fatih Eroltu aka
Fatih Eroltu, Cameron Thomson and Salvatore
Campione

Defendants/Responding Parties

REASONS FOR JUDGMENT

Vella J.

Released: November 01, 2021