



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**CAUSE NO: G2019-0196**

**BETWEEN:**

**GLOBAL MARKETING ASSOCIATES LLC**

Plaintiff

**-and-**

**THE PROPRIETORS, STRATA PLAN No. 44**

Defendant

**Appearances: Mr James Kennedy and Matthew Harders of KSG for the Plaintiff**

**Mr Richard Parry of Bedell Cristin for the Defendant**

**Before: The Honourable Justice Jalil Asif KC**

**Heard: 1 May 2024**

**Judgment: 18 September 2024**

*Strata corporations—right of proprietor of strata lot to inspect books of account—scope of obligation on strata corporation to permit inspection—types of documents falling within books of account—whether right of inspection implicitly includes right to copies—whether strata corporation entitled to charge for copies*

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**JUDGMENT**  
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**A. Introduction**

1. This case raises the question of the extent of the obligation on a strata corporation to make its books and records available for inspection by its proprietors – in particular the breadth of that obligation and whether it includes a requirement to provide copies of such documents. In addition, the Plaintiff complains that the Defendant strata corporation has failed to keep minutes of its management meetings. The Defendant asserts that it has done so.
2. I am grateful to counsel for their helpful arguments and to the parties for their patience in awaiting this judgment.
3. The Plaintiff is a proprietor of a lot within the strata in question. The prime mover behind the Plaintiff is Mr James Keim, its managing director. The Defendant’s response to the claim has been conducted on the instructions of its executive committee (“Exco”). Mr Keim has made clear that the Plaintiff’s claim is for declarations and appropriate consequential relief, so that Exco is required to comply with the Defendant’s byelaws. The Plaintiff does not seek wider relief, for example damages.
4. The dispute appears to have been generated by concerns on Mr Keim’s part of unfair treatment of strata proprietors by Exco and, more importantly, that the Defendant might be being used by certain proprietors to circumvent local tourism taxes, Cayman Islands anti-money laundering regulations and related transparency laws, and US foreign bank account reporting obligations with consequent risks for proprietors of potential involvement in money laundering.
5. The Plaintiff puts it this way in its opening submissions:

*“51. The issue is that owners who rent their units short-term and long-term have potentially avoided opening bank accounts in the Cayman Islands, or in the alternative avoided placing their rental proceeds into their own account, and have instead used the Strata bank account as a de facto bank, in effect having the Strata bank account used to collect their rent and retain the funds in those accounts until such time as those owners otherwise direct. This could enable avoidance of US FATCA or CRS reporting and could expose both the Strata’s bank, and the Strata and/or proprietors themselves, to suspected involvement in serious criminal issues including money laundering.”*
6. That this is not a fanciful concern on Mr Keim’s part was recently demonstrated to me in a different case about a different strata, where a witness gave evidence that a proprietor, who is a US citizen, had

asked the witness to pay money into the proprietor's strata account, rather than to pay it directly to the proprietor. The reason was so that the proprietor's (soon to be ex-) wife and the US authorities were not aware of the funds. The witness was apparently blissfully ignorant of the import of their evidence.

7. Finally, by way of introduction, I record that the Plaintiff has proceeded by way of an originating summons. This is intended to be used in cases which do not involve significant factual dispute. The procedural requirements for the hearing of an originating summons are streamlined:
  - 7.1 there is no discovery process (unless the court specifically orders it);
  - 7.2 the evidence is limited to affidavits or affirmations on each side, which should be served within a short timescale;
  - 7.3 there is often no oral evidence and cross-examination of witnesses.
8. There has been no discovery in this case. The documents I have seen are limited to those selected by each side to be exhibited to the affidavits relied upon, and there has not been any oral evidence nor any cross-examination of any witnesses.
9. The second main consequence of the streamlined nature of the originating summons procedure is that it usually leads to a much quicker resolution of the dispute. However, that has not been the case here, in part because the parties were apparently awaiting the outcome of another case, *RB440 Properties Ltd v The Proprietors, Strata Plan No. 22* (Unreported, Grand Court, 25 November 2021, Williams J), which they thought might be relevant to the resolution of the dispute in this case (in the end, it was not). The majority of the rest of the time that has elapsed appears to have been due to the parties taking a stop / start approach to advancing the litigation.

## **B. The relevant background**

### ***B.1 Overview of the legal nature of strata arrangements and management issues***

10. The Law Reform Commission wrote a detailed report, published on 9 November 2016, entitled *Modernisation of the Regulation of Strata Titles in the Cayman Islands*, which included a draft bill for consideration by Parliament. The parties included a copy of the Report in the materials before me but not the bill. The Report provides a useful outline of the nature of strata titles in the Cayman Islands and the issues affecting them and helps to provide some context for the current dispute.

11. Strata titles are regulated in the Cayman Islands by the Strata Titles Registration Act (2013 Revision) (“the STRA”), the Strata Titles Registration Regulations (2006 Revision) and the Registered Land Act (2004 Revision). The STRA is based on the Conveyancing (Strata Titles) Act, 1961 of New South Wales, Australia, which was introduced to facilitate the subdivision of land into strata lots, the management of stratas and the disposition of lots held within a strata. Stratas have been used extensively in common law jurisdictions other than England & Wales as a mechanism to hold land in multiple separated occupation, for example in Canada, New Zealand, Singapore and Australia. Whilst the legislation in New South Wales and other countries has undergone substantial evolution since 1961, the legislation in the Cayman Islands has not, and it was described by the Law Reform Commission in 2016 as needing “*comprehensive reform*”.
12. The Law Reform Commission’s Report was the product of a referral in July 2006 on the ground that the legislation had been found to be deficient in its ability to cater for the issues that arose following the destruction of lots within stratas by Hurricane Ivan in 2004. The Law Reform Commission noted in the introduction to its Report that “*the main problem highlighted [during its consultation phase] was ineffective management of strata schemes*” and commented that it is essential that, in order to enjoy the benefits provided by a strata scheme, the strata corporation must be efficiently managed. Concerns about proper strata management therefore go back at least 20 years.
13. On the specifics of accounts and financial records, the Law Reform Commission stated that:
- “124. *The keeping of the accounts by corporations has also been a source of complaint and calls were made for the legislation to provide strict accounting standards and auditing requirements.*
125. *In relation to the accounts of a corporation, the current statutory bye-laws provide that an executive committee shall-*
- *keep proper books of account in respect of all moneys received and spent by it;*
  - *prepare proper accounts relating to all moneys of the corporation and the income and expenditure thereof, for each annual general meeting; and*
  - *make the books available for inspection on application of any proprietor or chargee.*
126. *The recommendations for reform included ... an annual financial review and certification of the accounts by independent accountants. It had been recommended that strata schemes should consider the following additional account related requirements-*
- *the preparation of quarterly accounts;*
  - *a requirement that financial statements be served with an AGM notice to enable owners to review and consider the statements prior to the AGM;*
  - *a budget for the year following the AGM to be prepared and delivered with the AGM notice; and*
  - *special requirements relating to the accounts of a rental pool if such exists.*

127. *The Commission agreed that the law should be amended to provide more stringent accounting requirements and those requirements should form part of the substantive legislation subject to change only by the legislature. ...*

129. *... Clause 38 of the Bill ... provides that a corporation may, pursuant to a super-majority resolution, cause the accounts and financial statements of the corporation to be audited before presentation to the annual general meeting. Where it is resolved that a corporation's accounts should be audited, the accounts and financial statements of a corporation must be prepared and audited in accordance with generally accepted accounting principles. The costs of an audit would be an administrative expense payable from the administrative fund."*

14. The reforms proposed in the Law Reform Commission's draft bill have not been advanced by Parliament in the period since 2016.

### ***B.2 The relevant legislation***

15. Section 5 of the STRA provides that the proprietors of the strata lots contained in any strata plan shall become a body corporate upon registration of the strata plan, with perpetual succession. However, the STRA expressly provides in s.5(3) that other Acts dealing with the incorporation, regulation and winding-up of companies shall not apply to strata corporations. Thus, for example, the Companies Act has no direct application to a strata corporation.
16. The duties of the strata corporation under the STRA include insuring the buildings, paying insurance premiums, maintaining and repairing the common property and complying with notices or orders by any competent authority requiring repairs to, or work to be done in respect of, the land comprising the strata.
17. The strata corporation can establish a fund to cover administrative expenses, insurance premiums and the discharge of any of its other obligations and can levy contributions on the proprietors in proportion to the unit entitlement of their respective lots. The strata corporation is permitted to pursue proceedings against any proprietor who has failed to pay contributions.
18. It is not part of a strata corporation's purpose that it should generate a profit.

### ***B.3 Strata management***

19. The STRA requires that management of a strata is regulated by byelaws. These bind the corporation and the proprietors to the same extent as if they were signed and sealed by the corporation and the proprietor, and as if each proprietor had covenanted with the corporation and every other proprietor to comply with the byelaws. The STRA includes minimum required byelaws in Schedules 1 and 2,

which apply unless and until any different byelaws adopted by the strata are registered with the Land Registry. The byelaws in Schedule 1 cannot be amended or varied without a super-majority resolution (75% or 90% of proprietors voting in favour, depending on the planning zone in which the strata is located), while the byelaws in Schedule 2 may be amended or varied on the vote of a simple majority of proprietors.

20. The strata corporation does not have directors. Instead, the minimum byelaws in Schedule 1 of the STRA include a requirement that the strata corporation must be managed by an executive committee appointed by and from amongst the proprietors. The executive committee may appoint a managing agent to exercise certain powers and perform certain duties of the strata corporation. The minimum byelaws do not address topics such as the setting up and operation of a rental pool for proprietors. That is left to individual stratas to devise and implement themselves.

21. The Defendant's byelaws appear to have been prepared in 2007. They include as follows:

*"2. GENERAL MEETINGS*

...

*2.2. The order of business for an Annual General Meeting shall be:*

...

*2.2.5. Consideration of the financial statements of the Corporation as independently reviewed. The financial statements shall either be audited or certified by accountants appointed by the Executive Committee if the Proprietors so direct; ...*

...

*3. THE EXECUTIVE COMMITTEE*

...

*3.5. The quorum of an Executive Committee meeting shall be such number as the Committee may fix from time to time being not less than one half the number of members thereof. The format, location and means of a meeting may be determined by the Executive Committee and may include a meeting by teleconference, televideo, instant messaging or email exchange. Attendance or participation at a meeting by electronic means shall be valid for the purposes of determining a quorum of the Executive Committee.*

...

*3.8. Subject to the provisions of these By-Laws, the Executive Committee shall have power to regulate its own procedure.*

...

*3.11. The Executive Committee shall:*

*3.11.1. keep minutes of its meetings;*

*3.11.2. cause proper books of account to be kept in respect of all moneys received and spent by it;*

*3.11.3. prepare proper accounts relating to all moneys of the Corporation and the income and expenditure thereof for each quarter; Annual financial statements are to be presented to the Annual General Meeting and such Annual financial statements shall be examined and*

*their correctness ascertained either by the Treasurer of the Corporation and the Executive Committee;*

...

*3.11.6. on the application of a Proprietor or any person authorised in writing by him make the books of account available for inspection at all reasonable times; ...*

*3.14. Regular meetings of the Executive Committee shall be held at any place or places within the Cayman Islands or abroad on such delays (sic) and at such times as the Executive Committee shall by resolution or otherwise delegate. All meetings of the Executive Committee shall be closed to the Proprietors.*

...

*8. THE CORPORATION*

*8.1. The Corporation shall:*

...

*8.1.16. keep accurate accounts and send to each Proprietor an annual statement of income and expenditures in respect thereto and keep such accounts open for inspection by Proprietors within two business days after receipt of a written request by a Proprietor to produce copies of said items; ...”*

22. Similarly to the minimum byelaws, the Defendant’s byelaws do not deal with the operation of a rental pool of lots within the Defendant strata.

### **C. The background facts**

23. The evidence comprised an affidavit sworn by Mr Keim on 22 November 2019, an affidavit in response sworn by Mr Alan Hall on 8 January 2020, an affidavit sworn by Ms Jennifer Clancy on 4 March 2024 in support of the Plaintiff’s claim and an affidavit in response to that of Ms Clancy sworn by Ms Lee MacNeil on 4 April 2024, along with the exhibits to each of those affidavits.

24. Clause 3.2.1 of the Defendant’s byelaws provides that Exco shall comprise 3-5 proprietors, to be elected on rotation for a two-year term.

24.1 Mr Keim was a member of Exco in 2010, after which he stood down.

24.2 Mr Hall swore his affidavit as a member of Exco. He did not state the periods when he served as a member of Exco, but Mr Keim’s evidence is that Mr Hall was a member from at least 2010 and was still a member when Mr Keim swore his affidavit in November 2019.

24.3 Ms Clancy swore her affidavit as someone who had been a member of Exco for 2013-2020, when she did not stand for re-election, and again from 2022-2024, when she was not re-elected.

24.4 Ms MacNeil was a member of Exco for 2006-2008, when she was not re-elected, and from 2010-2021.

As indicated earlier, none of the witnesses gave oral evidence nor were they cross-examined.

***C.1 Pre-proceedings events***

25. Mr Keim's evidence as to the background to the current dispute was not challenged by any of the other witnesses in their affidavits. I therefore accept it.
26. Mr Keim says that he joined Exco in 2010. There were four other locally resident members of Exco, including Mr Hall. They found there were significant management problems, including that the Defendant's financial records were in disarray and proprietors' rental activities were unregulated and not transparent. Exco hired an independent accountant to rectify the Defendant's books and records and hired a professional management company (BCQS) to help manage the strata and the Defendant's financial records going forward.
27. Mr Keim attempted to set up a more transparent arrangement for a rental pool of strata lots, but he met with opposition from some proprietors involved in short-term rentals who appeared to be opposed to transparency.
28. In 2011, four proprietors who were not locally resident and who were involved in short term rentals were elected to Exco, including Ms MacNeil, and Mr Keim stood down. Mr Hall remained the only locally resident member of Exco. Ms Clancy replaced one of the non-resident proprietors in 2012 and the composition of Exco did not change after that until Ms Clancy's retirement as a member at the end of 2020.
29. Mr Keim says that issues with transparency of the strata management arose again in 2011, almost immediately after the new Exco took office. He gives a number of examples, which I do not need to set out save to note that Mr Keim says that efforts to set up a transparent rental pool were stopped. All rentals were instead handled by individual proprietors by private agreement or through private websites.
30. During 2018, Mr Keim's concerns about the management of the strata by Exco became more troubling.

- 30.1 In 2018, Exco issued Rules of Occupancy, which Mr Keim describes as reading like rules for a boutique hotel. He says the Rules attempted improperly to restrict the legal rights of residents. The Rules of Occupancy were not in evidence before me.
- 30.2 Mr Keim identified a website being used by the four Exco members and certain other proprietors to arrange short-term rentals of lots within the strata. He says the website appeared to be a coordinated effort by Exco to manage rentals but was not transparent in that it was not made known to proprietors by Exco, not openly managed by the Defendant, and was difficult to find on the internet.
- 30.3 Mr Keim discovered that one Exco member had failed to disclose her ownership of a strata lot in her bankruptcy filing in the US in 2011. Copies of the bankruptcy filings which appear to confirm this were before me in evidence.
31. Mr Keim says that these features caused him concern that:
- 31.1 strata funds might be being used to set up and manage the strata lot rental website, i.e. without disclosure to the body of proprietors and for the benefit of a selected group of proprietors only; and
- 31.2 the strata bank accounts might be being used to circumvent transparency laws that had recently come into force, with that concern being amplified by the obscure nature of the website. I infer that Mr Keim was also concerned by the example of the Exco member failing to disclose her ownership of a strata lot to the US bankruptcy court.
32. Mr Keim therefore sought to find out more about the management of the Defendant by seeking to exercise the Plaintiff's right of inspection of the Defendant's financial records under cl. 3.11.6 of the byelaws. In broad outline, the Plaintiff summarised the initial phase of discussions over the right to inspect and take copies of the Defendant's books of account and other documents between September 2018 and September 2019 as being fruitful and conciliatory. However, when Mr Keim sought in September 2019 to involve accountants on his side to review the Defendant's books of account, Exco's position hardened.
33. In about September 2018, Mr Keim engaged attorneys on behalf of the Plaintiff. They wrote to Exco on 20 September 2018 requesting copies of Exco's minutes from January 2015 to September 2018 and of the Defendant's books of account, including bank statements, ledgers and cash reconciliation.

34. The Defendant (acting through Exco) also engaged attorneys, who responded on 12 October 2018 that the byelaws did not require that Exco minutes had to be made available to proprietors and that Exco would not provide copies of all minutes but would provide copies of any minutes addressing any particular concerns of Mr Keim, which he was invited to identify. They said that Mr Keim could attend BCQS's offices to inspect the books of account (including the Defendant's QuickBooks ledgers) at a pre-arranged date and time, but the Plaintiff would have to pay the reasonable costs of providing copies of documents.
35. The Plaintiff's attorneys responded on 26 October 2018 to seek clarification whether Exco did not keep minutes, or that it kept them but would not disclose them. They repeated their request for copies of the Defendant's bank statements and explained why these were needed in addition to the ledgers. They indicated that the Plaintiff would pay the reasonable costs of providing copies of documents.
36. On 4 December 2018, the Defendant's attorneys offered to allow Mr Keim to inspect the Defendant's annual statements and accounts at BCQS's offices, including bank statements, with Mr Keim to identify any documents that he wished to be copied, which would be provided to him once he had paid for the copies.
37. On 20 December 2018, the Plaintiff's attorneys repeated their request for copies of Exco's minutes. They also sought a discussion regarding the practicalities of the proposed inspection of the Defendant's books of account and bank statements.
38. In response, on 24 January 2019, the Defendant's attorneys said that Exco maintained its refusal to provide copies of its minutes generally, but asked whether Mr Keim's areas of concern were limited to the matters he had raised in recent correspondence with all proprietors, so that they could take instructions. They provided contact details for BCQS to facilitate a discussion regarding access to the books of account and other financial documents.
39. Matters appear then to have been progressed between Mr Keim and Exco directly until August 2019, when the Plaintiff's attorneys indicated that Mr Keim's representative would be in touch with BCQS the following week to discuss inspection and obtaining copies of the Defendant's books of account and bank statements.
40. On 3 September 2019, Mr Anthony Johnson of Rellim International Ltd spoke with and wrote to BCQS on Mr Keim's behalf. Mr Johnson's letter stated that he had been appointed by Mr Keim to

undertake an audit review of the Defendant's accounting and other records, as held by BCQS. Mr Johnson set out an extensive list of documents that he wished to inspect. Before me, the Defendant complained that this request went beyond what the Defendant had previously agreed to make available.

41. BCQS responded on 4 September 2019, on Exco's instructions, refusing to cooperate and stating that they would not communicate any further.
42. In an attempt to address the objections raised by Exco through BCQS, Mr Keim wrote to BCQS on 18 September 2019 confirming that the Plaintiff had instructed Rellim International Ltd to inspect the Defendant's books of account, and that the right to inspect had already been acknowledged by the Defendant. Mr Keim set out again the list of documents that Rellim would require.
43. BCQS replied the same day that they would take instructions from Exco. However, there was no further response from BCQS or Exco over the following 8 weeks. The Plaintiff commenced the current proceedings on 22 November 2019 supported by his affidavit sworn the same day.

#### ***C.2 Post-issue events***

44. On 18 December 2019, the Defendant's attorneys wrote inviting the Plaintiff to withdraw the proceedings. They repeated the offer to inspect the Defendant's books of account and bank statements and indicated that the cost of providing copies would be CI \$600 to reflect 4 hours' work. They stated that the Plaintiff had accepted that there was no right to inspect Exco's minutes (which Mr Keim had done in his affidavit) and said it was not reasonable to allow the Plaintiff access to Exco's minutes given the terms of cl. 3.5, 3.8 and 3.14 of the Defendant's byelaws, set out above. The Plaintiff did not withdraw the action.
45. The Defendant filed Mr Hall's affidavit on 8 January 2020. Mr Hall stated that the Defendant had offered to allow inspection and to provide copies of its books of account and bank statements. He stated that Exco does keep minutes and explained the usual practice for holding Exco meetings. However, Mr Hall did not exhibit copies of any of Exco's minutes.
46. Correspondence from July 2020 indicates that by that time the main issues in dispute between the parties were the precise categories of documents that the Plaintiff was entitled to inspect, whether the

Plaintiff should have to pay for copies of documents and whether Mr Hall's evidence that minutes were kept was determinative of that question.

47. On 30 October 2020, in what is said by the Defendant to be an attempt to bring the claim to an end, the Defendant unilaterally arranged for BCQS to provide electronic copies of the Defendant's ledgers for 2015-2019 to Mr Keim, reserving the Defendant's position that it was not obliged to do so. On 25 November 2020, BCQS provided electronic copies of the ledgers for 2010-2014.
48. The Plaintiff issued a summons for directions on 15 February 2021. This appears to have been adjourned several times, and finally came on for hearing before Acting Justice Walters on 1 December 2022. Amongst other things, the subsequent Order required:
  - 48.1 the parties to agree and execute a form of non-disclosure agreement to address the data protection issues arising from any further disclosure, as identified by Justice Williams in *RB440 Properties Ltd*; and
  - 48.2 the Defendant to identify precisely what categories of documents it accepts constitute its "books of account" by reference to a list set out in the Order based on the documents sought by the Plaintiff.
49. On 22 December 2022, the Defendant provided its response as to the categories of documents that it accepts fall within the term "books of account". The Defendant maintained its position that its bank statements did not fall within that term but nonetheless offered to provide redacted copies to the Plaintiff once a suitable non-disclosure agreement had been finalised and executed. In the event, the parties were not able to agree a form of non-disclosure agreement.
50. On 29 May 2023, the Defendant unilaterally forwarded redacted copies of its bank statements to the Plaintiff without prejudice to its stance as to what types of documents should properly be considered part of the Defendant's books of account. The covering letter indicated that the Defendant now took the view that the Plaintiff's requests were a fishing expedition and that it was unlikely that the matter could be resolved without the intervention of the Court.
51. Having heard nothing from the Plaintiff in response, on 21 August 2023 the Defendant invited the Plaintiff to confirm whether it was abandoning the proceedings. On 4 October 2023, the Plaintiff responded that it intended to proceed and filed a Notice of Intention to Proceed.

52. The matter was listed before me on 25 January 2024 for directions. I refused the Plaintiff permission to rely on a further affidavit sworn by Mr Keim and an affidavit sworn by another proprietor. I gave directions intended to lead to a prompt trial.
53. On 4 April 2024, the parties agreed that the Plaintiff could rely on the affidavit of Ms Clancy and that the Defendant was permitted to file evidence in response. The Defendant thereafter filed Ms MacNeil's affidavit.
54. The originating summons came before me on 1 May 2024 for final determination.

**D. The parties' contentions on the issues**

***D.1 Did the Defendant fail to allow the Plaintiff to inspect its books of account?***

55. The Plaintiff asserts that on 3 September 2019, the Plaintiff made the relevant request to inspect the books of account. On 4 September 2019, BCQS on Exco's instructions rebuffed that request. There was no substantive response to Mr Keim's follow-up on 18 September 2019. Accordingly, the Plaintiff says, the Defendant was in breach of the byelaws at the date the proceedings were commenced.
56. The Defendant responds that at the date of issue, the Plaintiff had either been given permission to inspect, had inspected or had received copies of the "books of account" and the Defendant had confirmed to the Plaintiff that it kept minutes of Exco meetings. The Defendant therefore contests that there was any necessity for the Plaintiff to commence the proceedings at all.

***D.2 What constitutes the Defendant's "books of account"?***

57. This is the main battleground between the parties. The parties agree that there is no case law in the Cayman Islands on the meaning of "books of account" in the context of strata corporations. The Defendant contends that the "books of account" should be construed narrowly. The Plaintiff contends for a broader interpretation.
58. The issue appears to be of general importance to the operation of stratas within the Cayman Islands and raises significant policy questions for the following reasons:
- 58.1 The term "books of account" is not defined in the STRA nor in the minimum byelaws in the schedule to the STRA. The Plaintiff argues that guidance from the Court to proprietors and to

those involved in managing stratas as to the extent of the “*books of account*”, and the proprietors’ rights to inspection, would avoid the need for future litigation whenever the question arises.

58.2 It is increasingly common for strata developments in the Cayman Islands to involve large numbers of lots, with a trend towards including commercial and residential properties in mixed use developments. The value of these developments can be in the hundreds of millions of dollars; maintenance and other costs incurred as part of the strata management can be high in value; and the money running through a rental pool for an individual strata may be in the millions of dollars. It is important for public confidence for investors in property in the Cayman Islands that stratas are seen to be run with transparency and accountability.

59. As to the relationship between proprietor and strata corporation, the Plaintiff submits that:

59.1 Each proprietor is a member of the strata corporation; they have each paid a contribution towards the management activity undertaken on their behalf by the executive committee; and the services are obtained by the executive committee on behalf of and for the benefit of the proprietors.

59.2 The purpose of the proprietors having a right to inspect the books of account must be to facilitate transparency in the strata’s affairs, to enable the proprietors to inform themselves as to the financial state and dealings of the strata and to check on how their money is being spent. This is a functional necessity designed at guarding against mistakes, misappropriation or negligent practice, safeguarding of the proprietors’ funds, and holding the executive committee to account.

59.3 A narrow construction of the books of account, and the proprietors’ right to inspect, would leave strata owners with no realistic remedy in situations where concerns do arise due to the resulting absence of effective checks and balances against incompetence or abuse of position.

60. Turning to the question of interpretation, the Plaintiff submits that, in the absence of guidance in the STRA, the Court should construe “*books of account*” by analogy with:

60.1 the meaning of “*books of account*” in other legislation in the Cayman Islands; and

60.2 the meaning of “*books of account*” adopted in other jurisdictions that operate similar strata land title registration systems.

61. Pulling these threads together, the Plaintiff's case is that "*proper books of account*" in cl. 3.11.2 and 3.11.6 of the byelaws includes all material underlying documentation necessary to allow a proprietor to obtain a true and fair view of the financial status of the strata. More specifically, the Plaintiff contends that the "*books of account*" include the following:
- 61.1 the strata's annual financial statements;
  - 61.2 accounts payable ledgers;
  - 61.3 accounts receivable ledgers;
  - 61.4 balance sheets;
  - 61.5 general ledgers;
  - 61.6 profit and loss statements;
  - 61.7 trial balances;
  - 61.8 expense ledgers for all strata expenditure, including outgoing wires, electronic funds transfers and cheque payments;
  - 61.9 income ledgers, including all income received by the strata;
  - 61.10 unredacted bank statements in electronic form for any bank account held or managed by the strata;
  - 61.11 check payment details;
  - 61.12 deposit slip details;
  - 61.13 details of outgoing wire payments;
  - 61.14 detailed invoices and expense records; and
  - 61.15 contracts.
62. The Plaintiff contends that this broad construction is consistent with the approach in other jurisdictions that have adopted strata landholding systems. For example, in New South Wales, Australia, which was the source for the original STRA, the applicable legislation now provides that "*accounting records*" are defined as constituting consecutively numbered receipts, a statement of withdrawals and deposits for any accounts, a cash record and a levy register (record of proprietors'

contributions). A similar approach has been taken in New Zealand, British Columbia, Canada and Singapore.

63. The Defendant rejects the Plaintiff's position. The Defendant submits that the meaning of "*books of account*" is limited to those documents that show the money received and spent by the strata corporation, without including the underlying or referenced documents. The Defendant accepts that there is no statutory definition of books of account in the STRA. It argues that the Plaintiff is impermissibly asking the Court to "*fill in the blanks*" in the STRA by reference to other Cayman Islands legislation which is expressly stated not to apply to strata corporations. The Defendant relies on s.5(3) of the STRA and says that neither the Companies Act nor any foreign jurisprudence are applicable to assist with the interpretation of "*books of account*".
64. The Defendant argues that the obligations on companies and partnerships are distinguishable and inapplicable to the regulation of strata corporations because the purpose of such entities is the carrying on of business with a view to a profit. They have different motivations and obligations for keeping financial records for review by partners, directors, officers and shareholders. The Defendant points out that company directors are normally paid to manage the company's duties and obligations, and in a partnership all partners have an equal right of access to inspect and take copies of the partnership's books, records and management decisions.
65. The Defendant submits that strata proprietors are not entitled to the same detailed financial information as shareholders or partners in a business would require because the purpose of a strata corporation is centred specifically on the control, management and administration of common property. Strata corporations are not run for profit and the executive committee members are not remunerated for their service.
66. The Defendant contends that it is significant that Parliament has revised the STRA five times since its original enactment, most recently in 2013, but has not removed s.5(3) disapplying the Companies Act. Neither has it prescribed or expanded the categories of documents that fall within the scope of "*books of account*". The Defendant says that this is a conscious and deliberate acknowledgment by Parliament of the commercial and practical differences between strata corporations and private companies: had Parliament wished to prescribe what constitutes "*books of account*" it could and would have done so.

67. So far as statutory regimes and case law in other countries may be of assistance, the Defendant submits:
- 67.1 The legislation in New South Wales no longer uses the term “*books of account*” in relation to inspection of records by proprietors, so that the revised New South Wales strata legislation is irrelevant.
- 67.2 The legislation in British Columbia has been amended to include an explicit and more detailed list of documents that should be open to inspection by proprietors, for example, a proprietor has an express statutory right to inspect and receive copies of books of account, budgets and financial statements, as well as (inter alia) bank statements, cancelled cheques, deposit certificates, contracts and income tax returns. The Defendant’s argument appears to be that in order to give the express addition of these categories of documents a purpose, it must be that the legislature in British Columbia considered that they did not otherwise qualify as part of the “*books of account*”. Hence, these categories of documents should not be considered to be within “*books of account*” in the Cayman Islands, where a similar amendment to the legislation has not been implemented.
- 67.3 The decision of the British Columbia Supreme Court in *Kayne v The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, provides helpful guidance. The court held that the right to inspect is limited to the documents and categories referenced in the legislation and is not equivalent to discovery in civil litigation. The judge also held that books of account do not have to be all encompassing financial documents or need to be kept in any particular form, and inspection does not include the production of every bill or receipt that may be reflected in the books of account.
68. The Defendant submits that if a proprietor, upon inspecting the books of account, is of the view that they reveal financial mismanagement or intentional wrongdoing that results in loss, they should commence appropriate civil proceedings. Through those legal proceedings the proprietor would be entitled to discovery of all relevant documents, which would inevitably include the books of account and wider categories of documents depending on the claim brought. Thus, the STRA framework in its current form facilitates transparency of a strata corporation’s financial records in an appropriate and proportionate way that reflects the practical and commercial realities of strata corporations having regard to their statutory purpose, means and resources.

69. Otherwise, the Defendant says, it is always open to the proprietors in a particular strata to adopt byelaws at the time of registration or subsequently to amend the byelaws to provide for a greater degree of access to management documents than those that fall within the “books of account”, provided a sufficient number are in favour.

**D.3 Is the Defendant required to provide copies of documents or merely to permit inspection?**

70. The Plaintiff relies on Nelson v Anglo-American Land Mortgage Agency Company [1897] 1 Ch 130 and Mutter v Eastern and Midlands Railway Company (1888) LR 38 Ch Div 92 as authority that the right to inspect carries with it the right to take copies of the documents being inspected.

71. The Defendant argues that these two decisions are inapplicable for two reasons:

71.1 they address English company law, which is not applicable and offers no guidance to the situation of a strata corporation; and

71.2 they are from the 19<sup>th</sup> century when technology did not permit photocopying or provision of electronic copies – whilst they indicate that a person should be allowed to take notes, up to a full copy of the original document – they do not warrant the existence of a right to demand photocopies or electronic copies of documents.

72. The Defendant contends that it is significant that the Strata Property Act 1998 applicable in British Columbia, Canada, (which was also based on the New South Wales legislation from 1961) was amended in its third iteration as follows:

*“On receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, **and provide copies of them to ...**”*  
(emphasis added by Defendant)

The Defendant says that this was an express extension to the rights of proprietors requesting access to “books of account” or was a new right to receive copies in addition to the existing right of inspection. Its argument is that because the British Columbia legislation shares the same origin as that in the Cayman Islands and contains virtually identical language regarding the right of inspection of books of accounts, the amendments made in British Columbia authoritatively determine that the right of inspection of books of account does not implicitly include a right to receive copies.

73. In any event, the Defendant says, it had in fact offered the Plaintiff inspection of sufficient documents to comprise the “*books of account*” before the Plaintiff sued, or the Defendant actually provided copies to the Plaintiff during the proceedings.

**D.4 Did the Defendant keep minutes of Exco meetings?**

74. The Plaintiff accepts that it does not have a right under the byelaws to sight of Exco’s minutes. However, it complains that whether or not minutes were kept should have been capable of rapid resolution by the Defendant either admitting it did not or exhibiting copies of the minutes within the proceedings. The Plaintiff relies on *In re Borthwick, Borthwick v Beauvais* [1948] Ch 645 to support its argument that it did not need to seek an order for discovery within the proceedings because the Defendant should have exhibited all relevant documents, which any minutes clearly were.

75. The Plaintiff also complains that the Defendant failed to respond to its notice to inspect documents referred to in Mr Hall’s affidavit.

76. The Plaintiff is critical of Mr Hall’s evidence, which it submits is vague, does not provide sufficient detail to prove his assertion that minutes were kept and fails to exhibit copies of the minutes. The Plaintiff also criticises Mr Hall for failing to explain the pattern of Exco meetings later deposed to by Ms Clancy and Ms MacNeil, namely that there are two in-person meetings each year, one shortly before the strata AGM and one shortly after it, with other decisions being made during the year by exchange of emails.

77. The Plaintiff submits that the inference to be drawn from the affidavits of Ms Clancy and Ms MacNeil is that, at least up to January 2021, Exco did not keep minutes of all meetings, only for some of its meetings.

78. The Plaintiff accepts that from January 2021 onwards, Ms MacNeil’s evidence indicates that Exco did start keeping minutes of all meetings.

79. The Defendant’s position is that it is for the Plaintiff to prove that Exco did not keep minutes at the relevant times and that, on the evidence that has been filed, the Plaintiff cannot do so. The Defendant says that, moreover, the evidence shows that minutes were kept.

**E. Discussion and decision*****E.1 Did the Defendant fail to allow the Plaintiff to inspect its books of account?***

80. The chronology set out earlier in this judgment, based on the correspondence exhibited, supports Mr Keim's summary that, between September 2018 and August 2019, the Defendant was willing to work with Mr Keim to provide him with inspection and copies of the Defendant's books of accounts. However, when it became apparent on 3 September 2019 that Mr Keim had engaged accountants and when they provided their list of requested documents to BCQS and mentioned their intention to prepare an audit review, Exco's position changed. BCQS expressly stated on 4 September 2019 that they could not provide any of the information requested, nor communicate further. BCQS took the following points:

80.1 the request was made by Mr Keim, not by the Plaintiff, which was the person entitled by the byelaws to inspection. This was an obviously bad point, because the Plaintiff was entirely controlled by Mr Keim and Exco had been happily dealing with Mr Keim on behalf of the Plaintiff for the previous 12 months; and

80.2 audits of the Defendant's accounts could only be performed by accountants appointed by Exco at the direction of a majority vote of the proprietors. This was an equally bad point because the audit review mentioned by the accountants was not for the Defendant's purposes but was something that Mr Keim wished to carry out for his own benefit and at his own expense. The byelaws do not seek to impose any restriction on a proprietor's right to inspect the Defendant's books of account and the Plaintiff's motivation, through Mr Keim, for wanting to do so was irrelevant. Further, the accountants were acting as the Plaintiff's agent, so the professional capacity in which they made their request was also irrelevant.

81. Neither BCQS nor Exco responded to Mr Keim's follow-up correspondence, apart from BCQS's indication that they would take instructions. After 8 weeks, the Plaintiff commenced the proceedings.

82. The Defendant's evidence concentrates on its offers to grant inspection made before September 2019 and the offers and voluntary disclosure made during the course of the proceedings. It does not address why the Defendant took the stance it did on 4 September 2019 and why it did not respond to Mr Keim's correspondence during September, October and up to 22 November 2019. It seems to me that this is because there is no good reason for the Defendant's change of position.

83. I therefore find that, at the date when the Plaintiff commenced its proceedings, the Defendant had failed or refused to permit the Plaintiff or its agents to inspect the Defendant's books of account, as required by the Defendant's byelaws.
84. The fact that the Defendant had earlier offered to provide inspection and copies of documents is irrelevant given its change of stance on 4 September 2019. The Defendant's actions after the proceedings had commenced may be relevant to the question of costs but do not have the result that the claim was improperly or inappropriately commenced.

***E.2 What constitutes the strata's "books of account"?***

85. As already set out, it is common ground that the STRA does not provide any guidance as to the meaning of "*books of account*". Before considering the parties' arguments based on the analogies that they say can or cannot be drawn from legislation and authorities in other contexts and countries, it is useful to look at the situation from first principles.

***E.2(a) The principled approach***

86. In any strata, the proprietors of the strata lots from time to time are members of the strata corporation. The proprietors have a common interest in the operation and maintenance of the strata property in respect of: (i) their own lot; (ii) the common areas and facilities made available for all strata proprietors; and (iii) the other strata lots, because of the indirect impact of any defects or anti-social use of other strata lots on the amenity and value of their own lot.
87. Stratas need to be effectively and properly managed for the benefit of all proprietors. As stratas have become larger in size and value, the use of an executive committee to manage the strata has become the norm. Save where the byelaws of an individual strata provide otherwise, the executive committee is comprised of strata proprietors elected by the body of strata proprietors as a whole. The members of the executive committee are, in effect, delegates for the general body of strata proprietors.
88. I consider it is beyond argument that if one were to ask an ordinary proprietor of a strata lot about their expectations of their executive committee, they would agree with the following propositions and that executive committee members would do so too:
- 88.1 the proprietors place trust and confidence in the members of the executive committee to manage the strata for their collective benefit and in their collective best interests;

- 88.2 the proper performance of their role as members of the executive committee requires that the executive committee manages the strata for the collective benefit and in the collective best interests of the proprietors as a whole;
- 88.3 it is an inherent requirement of their role that executive committee members should not put themselves in a position where there is a conflict between their own interests and those of the proprietors as a whole; and
- 88.4 it is equally inherent in their role that they should not make a personal profit from acting on behalf of the proprietors as a whole.
89. The above are all hallmarks of the existence of a fiduciary duty owed by the members of the executive committee to the proprietors and, in my judgment, the members of a strata executive committee do owe fiduciary duties to the general body of strata proprietors by virtue of their position. The fact that the executive committee members are not remunerated is irrelevant.
90. The existence of a fiduciary relationship between proprietors and their executive committee is supported by consideration of the analogous position of a company incorporated under the Companies Acts. It is well settled law that the directors of a company owe fiduciary duties to the shareholders in the company. In the context of strata corporations, there are no directors but in managing the strata corporation the executive committee performs an equivalent function to that of the board of directors managing a company on behalf of the members. I cannot see that there is a material difference between the two cases that militates against the existence of a fiduciary relationship in the case of the executive committee of a strata corporation mirroring that owed by company directors to their shareholders.
91. A company director's fiduciary duties include the duty to ensure that the company keeps proper records of its transactions and a duty to provide an account to the shareholders of the company's dealings and of the director's use of company property. This is easily transposed to the situation of a strata corporation and is consistent with the obligations in the minimum byelaws to keep proper books of account and to provide the proprietors with annual financial statements.
92. In my view, the underlying fiduciary nature of the relationship and the duty to account for use of corporate property are important factors when construing the breadth of the obligation in the byelaws

to allow proprietors to inspect the books of account. Executive committees of strata developments should be open with their proprietors, not actively trying to keep their activities secret from them.

93. I interject here that I reject the Defendant's submission that the executive committee or strata corporation should only be required to provide inspection of the minimum core documents and that a proprietor should have to identify and commence a substantive claim, and then obtain further documents held by the executive committee or the strata corporation by discovery within those proceedings. That seems to me to be in direct conflict with the proper nature of the relationship between proprietors and the executive committee and strata corporation, as well as being unrealistic and contrary to the public interest in potentially generating unnecessary litigation, with attendant legal costs to be incurred by proprietors on their own behalf and by strata corporations, with the latter being charged back to proprietors.

E.2(b) Analogies with other Cayman Islands legislation

94. I now consider the parties' arguments based on asserted analogies to be drawn from legislation and authorities in other contexts and countries.
95. The obligation in clause 3.11.2 of the Defendant's byelaws (set out earlier) is to keep "*proper books of account*", which is lifted directly from clause 22(b) of the minimum byelaws prescribed in Schedule 1 of the STRA.
96. The Plaintiff submits that this is the same as the language used in s.59 of the Companies Act (2023 Revision), so that even though the direct application of the Companies Act is excluded by s.5(3) of STRA, it is permissible and appropriate to draw an analogy with s.59 of the Companies Act.
97. Section 59 of the Companies Act provides as follows:

*59.(1) Every company shall cause to be kept proper books of account including, where applicable, material underlying documentation including contracts and invoices with respect to —*

*(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place.*

*(b) all sales and purchases of goods by the company; and*

*(c) the assets and liabilities of the company.*

*(2) For the purposes of subsection (1), proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions."*

98. The use of “*including*” in s.59(1) of the Companies Act indicates that the types of documents listed within s.59 all fall within the compass of “*books of account*” and are exemplars of the kinds of documents expected to be retained and provided for inspection. Secondly, s.59(2) makes clear that the ultimate test for what must be included within “*books of account*” is that the documents must be sufficient to show a “*true and fair view of the state of the company’s affairs and to explain its transactions*”.
99. I agree with the Plaintiff’s argument that the Defendant’s duty to keep “*proper books of account*” is analogous with the duties on a company under s.59 of the Companies Act and should be construed consistently with s.59(1) and with the purpose of s.59(2) in mind, namely that the documents must be sufficient to show a “*true and fair view of the state of the company’s affairs and to explain its transactions*” and that inspection of those documents should be provided to proprietors on their request.
100. The Plaintiff’s argument is reinforced by the use of materially identical wording in s.28(2) and (3) of the Partnership Act (2013 Revision) and language to the same purpose in s.12 of the Non-Profit Organisations Act (2020 Revision). In addition, the existence of materially the same duty under the Non-Profit Organisations Act disposes of the Defendant’s response that it is inapt to draw parallels from companies and partnerships to strata corporations because in those cases the participants have come together with a view to earning a profit. The Non-Profit Organisations Act indicates that the profit element is irrelevant to the existence of the obligation.
101. In my judgment there is, and should be, a consistent approach to the content of “*books of account*” across different statutory contexts within the Cayman Islands. It is unsurprising that this is the case, since in all of these contexts the management cohort, whether directors, partners, members of an executive committee or controllers, are entrusted by others with property and funds to be used for the benefit of a wider group and are subject to a concomitant obligation to account to their principals for the use of that property and money.

*E.2(c) Foreign legislation and case authorities*

102. In light of my conclusions expressed earlier, I have not found it necessary to consider in detail the legislation in other countries that have adopted strata legislation. Nevertheless, I record that I agree with the Defendants that there is little assistance to be gained from consideration of strata legislation in other countries. As the Defendant pointed out, the relevant statutes in New South Wales have been

substantially amended since 1961, including the change from “*books of account*” to “*accounting records*”, and the legislation in British Columbia has also been extensively amended. I do not consider that it is established that there is an international consensus on the law of stratas.

103. I do not find the judgment in *Kayne v The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 to be of assistance either. Pursuant to the proprietor’s inspection request, the strata corporation had provided six boxes of documents, including monthly financial statements, a balance sheet, budget comparisons, a general ledger, and bank reconciliations, but the proprietor still maintained that the documents produced were insufficient. It is clear from the judgment that the judge rejected the proprietor’s request because the information to be gleaned from the further documents sought was available from the documents that had already been provided. Thus, there was no need for any further production in order to provide the proprietor with the information for which the right to inspect was granted – in effect, the documents that had already been disclosed satisfied the requirement to show a true and fair view of the strata’s affairs and to explain its transactions. The judge’s comments that the documents to be provided do not need to be all-encompassing, and the distinction that he drew between (a) the right of inspection of the books of account and (b) discovery within legal proceedings, where documents must be provided even if duplicative and even if the essential information has already been provided, were made in and must be understood in that context.

*E.2(d) Wider issues regarding transparency, money laundering and foreign bank account reporting*

104. The Plaintiff asserts in its submissions that the Defendant’s ledgers and bank statements that have been voluntarily provided by the Defendant have given support to the Plaintiff’s concerns regarding transparency and foreign bank account reporting, and the risk of other proprietors being accused of involvement in money laundering. The Plaintiff says that the documents:

104.1 indicate the existence of other bank accounts, apparently used by the Defendant, which have not been disclosed; and

104.2 show non-strata transactions related to both short-term and long-term rentals of lots, including the Defendant making payments to the Department of Tourism of taxes due in respect of short-term lets, despite the Defendant not operating a rental pool.

105. International obligations to prevent money laundering and terrorist financing, to which the Cayman Islands are subject like most other civilised countries, mean that it is important that there are robust checks and balances on the operation of strata finances. The Court should encourage transparency

and set its face against potentially facilitating money laundering and evasion of foreign bank reporting obligations by enabling strata proprietors to use strata accounts to provide secret quasi-banking facilities.

106. In my judgment, these wider policy issues are consistent with and support the approach to the breadth of the right of inspection of books of account that I have concluded should be applied.

***E.3 Is the strata required to provide copies of documents or merely to permit inspection?***

107. In *Mutter v Eastern and Midlands Railway Company* (1888) LR 38 Ch Div 92, Lindley LJ, giving the judgment of the English Court of Appeal, said at 104-107:

*“I come now to the substantial question whether he is entitled to take copies of this debenture register. The question thus raised is one of considerable importance to companies and shareholders generally, and we therefore considered it desirable to look into the authorities before giving our judgment. The result of my own researches is negative rather than positive. I have not been able to find a single case either at law or in equity in which the Court has ever held that a person having a right to inspect a document has not also a right to take a copy of it, or of so much of it as he requires for some legitimate purpose. The right to take a copy is treated as incidental to the right to inspect, and the common form of orders to inspect is to inspect and take copies. This seems to be the common form at law when a mandamus is granted, and when an order is made on a motion in a pending action, and this is, and, so far as I have been able to discover, always has been, the common form of an order to inspect when made in Chancery. A great number of cases on this subject will be found collected in the well-known note to *Rew v Fraternity of Hostmen in Newcastle-upon-Tyne* and in Chitty’s Archbold; and an examination of these and other authorities has led me to the conclusion that, speaking generally, a right to take copies is always treated as incidental to a right to inspect. (See also *Browning v Aylwin*; *Rex v Lucas*; *Rex v Merchant Tailors’ Company*; *In re Burton and The Saddlers’ Company*.) ...*

*When the right to inspect and take a copy is expressly conferred by statute the limit of the right depends on the true construction of the statute. When the right to inspect and take a copy is not expressly conferred the extent of such right depends on the interest which the applicant has in what he wants to copy, and on what is reasonably necessary for the protection of such interest. The common law right to inspect and take copies of public documents is limited by this principle, as is shewn by the judgment in *Rex v Justices of Staffordshire*; so is the common law right of the member of a corporation to inspect and take copies of the documents of the corporation: *Rex v Merchant Tailors’ Company*.*

*Bearing in mind these principles it is necessary to turn to the statute on which the Plaintiff relies, and to see what right it confers upon him. The section which gives him the right to inspect is silent on the subject of taking copies. ...*

*Parliament having conferred the right to inspect, the Court ought not so to construe the statute as to render the right conferred illusory, and if the Court were to hold that in such a case as the present the right to inspect existed but the right to take copies did not, the Court would in effect be rendering the statute of no avail.”*

108. The other authority relied upon by the Plaintiff is Nelson v Anglo-American Land Mortgage Agency Company [1897] Ch 130, in which the judge summarised the effect of Mutter and then set out *in extenso* the passage beginning “*Parliament having conferred ...*”.
109. It is clear that the English Court of Appeal in Mutter was addressing the broad question of principle as to the effect of a right to inspect, and was not limiting its discussion to the particular situation of inspection of company registers. I therefore reject the Defendant’s argument that Mutter and Nelson are not relevant and helpful authorities. They confirm the general proposition that a right to inspect carries with it an implicit right to take copies, unless that second right is expressly excluded.
110. As with Mutter, the right to inspect in this case is explicit in the byelaws but the right to take copies is not. I should therefore construe the STRA and the byelaws to give proper effect to the right of inspection, which requires that it includes an implicit right to take copies.
111. The Defendant’s argument that the modern ability to obtain photocopies or electronic copies of documents renders Mutter and Nelson irrelevant seems to me to be a *non sequitur*. If anything, the fact that obtaining copies of documents is now much quicker and more convenient than having manually to create copies points towards the provision of copies as part of inspection rather than away from it.
112. However, Mutter and Nelson do not address the question of who should pay for the provision of copies of documents. In my judgment, it would be unreasonable to require a strata corporation to provide proprietors with copies of documents comprising its books of account by way of inspection without charge. The documents in question may be very substantial in volume, particularly if the inspection requested covers several years. It is essentially a question of allocation of cost. If the strata corporation were to be required to provide copies without charge, then the cost would eventually be re-charged to all proprietors as part of the strata corporation’s overheads in proportion to their unit allocation. If the individual proprietor is required to pay, then the charge is allocated to the person making the request and who wishes to obtain the documents, which seems to me to be the just result. However, this is not a warrant for the strata corporation to make a profit out of providing the copies – it should only be permitted to charge the reasonable costs of doing so.
113. Thus, my conclusion is that a proprietor is entitled to request copies of the documents in question but must pay the strata corporation’s reasonable costs of providing them.

**E.4 Did the Defendant keep minutes of Exco meetings?**

114. I repeat my earlier comment that the originating summons procedure is not appropriate to determine significant questions of disputed fact. It is unfortunate that, due to the late developments regarding the evidence of Ms Clancy and Ms MacNeil, an important dispute on a central factual question arose and that the question of possible cross-examination on affidavits was not canvassed. Nevertheless, I consider it is possible to deal with this aspect provided that I embark on my consideration of this issue with that cautionary note in mind.

115. Mr Hall's evidence as to the keeping of minutes by Exco was high-level and included the following:

*"8.4. Those elected to serve on EXCO are geographically diverse. Because of this, physical meetings are difficult, other than when on-island for attendance at the AGM. At such time EXCO meetings are held by EXCO members' attendance in person and brief minutes are produced which record the decisions made.*

*8.5. At other times, all EXCO discussion and decision making takes place by exchange of emails, as permitted under the By-laws and the decisions taken are minuted.*

*8.6. Decisions which fall outside the day to day administrative function of EXCO would be minuted and notified to all Proprietors either by e-mail from the Strata Manager, if urgent, or are included in the next newsletter, if not urgent."*

He exhibited copies of minutes of the 2018 and 2019 annual general meetings of proprietors but did not exhibit any copies of Exco minutes to support his assertions.

116. This was the state of the evidence until Ms Clancy agreed or offered to provide an affidavit in support of the Plaintiff's claim in March 2024, after she was voted off Exco in January 2024. Ms Clancy differentiates between the keeping of minutes before 2021 and after 2021. From January 2021 onwards, she says that Exco held monthly meetings by telephone or Zoom and that minutes were kept. She says that this was, at least in part, in response to the Plaintiff's complaints.

117. As regards the period up to January 2021, Ms Clancy says:

*6. During this period, the ExCo would only meet in person twice a year - shortly before the AGM, and shortly after the AGM.*

*7. ExCo members would usually come to Grand Cayman for the AGM, and it is at that time that ExCo elections are held. The ExCo would use this opportunity while members were on-Island to meet in person to coordinate the AGM, and then the newly-elected ExCo would have its first meeting in person shortly after the AGM.*

*8. During these two in-person meetings, various ExCo members would take their own notes of the meetings, but these were informal and personal, and were never collected, recorded or shared amongst the ExCo more generally. I took my own notes of these meetings at the time but was never asked to (and never did) share them with anyone, nor have I retained them.*

9. *I never saw any minutes of these meetings, and to my knowledge no minutes of these in-person meetings were taken.*
10. *Other than the two in-person meetings held each year as described at paragraphs 6 and 7 above, no meetings of the ExCo were held, whether by Zoom link or otherwise.*
11. *On occasion there would be a telephone call between some or all of the ExCo members and Michael Baulk of BCQS, however these were not treated as or considered to be meetings of the ExCo, and again, I never saw any minutes of these phone calls, and to my knowledge no minutes of these phone calls were taken.*
12. *Instead of convening meetings, the ExCo members would continuously communicate with one another via email to discuss relevant matters. To my knowledge, no minutes or record of the matters discussed or decided in those emails were kept, other than the emails themselves, which may or may not have been retained by each ExCo member.*
13. *In January 2020, I began to keep a spreadsheet of the votes of Exco members when decisions requiring a vote were made. I uploaded this spreadsheet to the ExCo Google drive. I continued this until I stepped off the ExCo in 2021. I have retained this spreadsheet.”*

118. Ms MacNeil’s affidavit was filed by the Defendant in response to Ms Clancy. Her evidence regarding the period before 2021 accords with that of Ms Clancy in that there were usually two Exco meetings each year shortly before and shortly after the AGM of proprietors, and that decisions were otherwise made by email. However, Ms MacNeil’s evidence on the keeping of minutes before January 2021 contradicts Ms Clancy. She says:

- “11. *During these meetings of the ExCo, minutes were taken and kept.*
12. *... Ms Clancy states at paragraph 9 that up to 2021 she never saw any minutes of ExCo meetings and that to her knowledge no minutes of in-person meetings were kept. I was surprised to read this statement, which is false. Minutes of ExCo meetings were kept and these minutes were circulated to all ExCo members. By way of example, at pages 1-13 of LMI are copies of minutes kept by the ExCo from in-person ExCo meetings that took place in January 2018, January 2019, and January 2020, shortly following the AGM in those respective years, together with the emails through which the minutes were circulated to the (then) members of the ExCo. For reference, this period represents the year prior to, of, and immediately following the year in which these proceedings were filed by the Plaintiff. This only represents a sample of the minutes of ExCo meetings that are kept, which I share for illustrative purposes.*
13. *The January 2018 post-AGM ExCo minutes were taken and circulated to all ExCo members on 19 January 2018 via email by Michael Baulk of BCQS Property Management, the strata manager for the Strata since 2010. A copy of the email which included the minutes appears at pages 1-2 of LMI. It can be seen from the email that all of the (then) ExCo members were sent the email, including Ms Clancy.*
14. *I took and kept the minutes of the January 2019 post-AGM ExCo meeting, which took place on 17 January 2019. I circulated these minutes to all members of the (then) ExCo by email on 17 January 2019. A copy of my email together with the attached minutes appear at pages 3-6 of LMI.*
15. *The January 2020 post-AGM ExCo minutes were taken by Ms Clancy. I received the minutes by email from Ms Clancy on 15 January 2020. It can be seen from the email that all of the (then) ExCo members were sent the email. An ExCo vote had taken place at a Pre-AGM ExCo meeting on 7 January 2020 on the proposed content of the First Affidavit*

*of Mr Alan Hall (the “Hall Affidavit”), which was shortly thereafter filed in these proceedings in defence of the declaration sought by the Plaintiff. Of note, Ms Clancy’s email on 15 January 2020 also attached a spreadsheet which confirmed that the ExCo, including Ms Clancy, unanimously approved the content of the Hall Affidavit, which categorically states that minutes of ExCo meetings are kept. A copy of the minutes from the 7 January 2020 ExCo meeting (vote) together with Ms Clancy’s email of 15 January 2020, including the attachments (the minutes and spreadsheet), appear at pages 7 to 13 of LMI.”*

119. Whilst it is generally inappropriate to try to resolve factual conflicts in affidavit evidence, I am satisfied that it is possible to do so here because Ms MacNeil’s account is supported by contemporaneous documents which she has exhibited. I therefore accept Ms MacNeil’s evidence and conclude that the Plaintiff’s complaint that Exco did not keep minutes of its meetings is not made out.
120. In those circumstances, the Plaintiff’s complaint that Mr Hall was obliged to have exhibited copies of the minutes does not arise for determination. Nevertheless, I have carefully read the judgment of the English Court of Appeal in *In re Borthwick, Borthwick v Beauvais* [1948] Ch 645 and I cannot see that is authority for the proposition advanced by the Plaintiff, namely that it was incumbent on Mr Hall to have exhibited them in order to prove their existence. Further, I note that if this were the position, then it would in effect give the Plaintiff access to the minutes by the backdoor when it is not entitled to them under the byelaws.

## **F. Conclusion**

121. For the reasons set out in detail, in my judgment:

121.1 A strata corporation’s duty to keep and to make its “books of account” is equivalent to the duty on a company under s.59 of the Companies Act. The strata corporation’s “books of account” must include documents sufficient to allow a proprietor to obtain a true and fair view of the financial status of the strata and is to be construed as including ledgers and material underlying documentation including contracts, bank statements and documents (redacted as necessary to comply with data protection principles), invoices and expense records.

121.2 The duty on a strata corporation is to make such documents available for inspection as are necessary to allow a proprietor to obtain a true and fair view of the financial status of the strata but should also reflect the duty of a fiduciary to make a full account to his principal.

121.3 The duty on the strata corporation to provide inspection implicitly includes a duty to provide copies of documents as requested by the proprietor, but subject to the proprietor paying the reasonable cost of making such copies.

122. Turning to this particular case, I find as follows:

122.1 The Defendant was in breach of its obligation under cl 3.11.6 of the Defendant's byelaws in that it had failed to make the Defendant's books of account available to the Plaintiff for inspection.

122.2 Insofar as it has not already done so since these proceedings were commenced, the Defendant must provide the Plaintiff with inspection of its books of account in accordance with the principles set out above. In my judgment, this includes all of the classes of documents requested by the Plaintiff as set out in paragraph 61.

122.3 Further, the Defendant should provide the Plaintiff with copies of documents, if requested, but is entitled to charge the Plaintiff the reasonable costs of preparing such copies.

122.4 The Defendant did keep minutes of Exco meetings, so the Plaintiff's claim in that respect is dismissed.

123. Within 7 days of handing down of this judgment, counsel should indicate: (a) whether they wish to be heard on costs and any consequential matters, providing their agreed available dates and time estimate for a hearing; or (b) whether they will submit written submissions on those points within 14 days. In either case, counsel should provide a draft order, agreed if possible, in advance of the hearing or with their written submissions.

**Dated 18 September 2024**

Filed 18 September 2024



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**THE HONOURABLE JUSTICE JALIL ASIF KC**  
**JUDGE OF THE GRAND COURT**