

Case Name:

Strata Plan VIS 4534 v. Seedtree Water Utility Co.

Between

The Owners, Strata Plan VIS 4534, petitioners, and
Seedtree Water Utility Co. Ltd., The Owners, Strata
Plan VIS 4988, The Owners, Strata Plan VIS 4531, and
The Owners, Strata Plan VIS 5105, respondents

[2006] B.C.J. No. 82

2006 BCSC 73

Victoria Registry No. 01 1155

**British Columbia Supreme Court
Victoria, British Columbia
Master McCallum**

Heard: November 24, 2005.

Judgment: January 13, 2006.

(6 paras.)

Counsel:

Counsel for the Applicants, Peter and Chloe Deerenberg: John S. Waldie

Counsel for the Respondent, Seedtree Water Utility Co. Ltd.: Michael J. Hutchison, Q.C.

¶ 1 **MASTER McCALLUM:**— The applicants, Peter and Chloe Deerenberg, are the owners of a strata lot and members of the petitioner strata corporation. The petitioner brought proceedings against Seedtree Utility Co. Ltd. ("Seedtree") for a variety of relief. The proceedings were dismissed and costs of \$7,410.95 awarded against the petitioner. Seedtree registered the judgment following the award of costs against title to all four of the strata lots in the petitioner strata corporation. The applicants wish to have the judgment against their strata lot released upon payment of 1/4 of the judgment amount being their proportionate share of the liability. Seedtree says the judgment can only be released upon payment of the entire amount.

¶ 2 The issue involves an interpretation of s. 166 of the Strata Property Act [S.B.C. 1998] Chapter 43 that reads:

Owner's liability for judgment against strata corporation

- 166(1) A judgment against the strata corporation is a judgment against all the owners.
- (2) A strata lot's share of a judgment against the strata corporation is calculated in accordance with section 99(2) or 100(1) as if the amount of the judgment were a contribution to the operating fund and contingency reserve fund, and an owner's liability is limited to that proportionate share of the judgment.
 - (3) Other than as set out in this section, an owner has no personal liability, in his or her capacity as an owner, for loss or damage arising from any of the following:
 - (a) the management and maintenance of the common property and common assets by the strata corporation;
 - (b) the actions or omissions of the council or strata corporation;
 - (c) any contracts made or debts or liabilities incurred by or on behalf of the strata corporation.

¶ 3 In the case at bar, the applicants say that s.166(2) can only mean that their share of the judgment must be limited to 1/4 being the calculation referred to in the subsection. They propose to pay their share and leave Seedtree to collect a similar amount from the other 3 owners.

¶ 4 Seedtree says that s. 166(1) is meant to provide a judgment creditor with a remedy against the owners and that s. 166(2) and (3) apply only to the relationship between the owners and do not affect the judgment creditor. Seedtree says that absent s. 166(2) and (3), the owners would have no mechanism for determining their individual liability.

¶ 5 Seedtree's submissions are in accordance with the general proposition that a debtor jointly liable with another may pay the debt and recover from the other joint debtor his just proportion of the debt (Law and Equity Act R.S.B.C. 1996, c. 253 s. 34 and s. 53). Any other result would put a significant onus on the judgment creditor to take multiple execution proceedings in the face of a judgment against all of the owners. This case is a good example of that possibility. If the applicants are correct, Seedtree would be bound to discharge the judgment on payment of the individual owners' proportionate shares and pursue the others individually for their shares. That would fly in the face of s. 166(1) that imposes liability on "all the owners".

¶ 6 A judgment creditor, in the position of Seedtree, is not required to grant partial releases upon partial payment. The judgment is secured in full against each strata lot. As among themselves the owners are each only liable for their proportionate shares but the judgment creditor is entitled to payment in full before releasing any charge. The application is dismissed. Seedtree is entitled to costs on Scale 3 against the applicants payable forthwith.

MASTER McCALLUM

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