

Case Name:

Tan v. Dockside Brewing Co.

**Khoon Wah Alfred Tan, Peck Kiat Chee, Lye Eam Tan, Tuck Fai
Tham, Tan Hui Chuan, Ah Kow Foo and Toong Jin Lam**

v.

Dockside Brewing Company Ltd., Klaus Jurgen Scholz

[2007] S.C.C.A. No. 262

File No.: 32060

Supreme Court of Canada

Record created: May 24, 2007.

Record updated: September 27, 2007.

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Status:

Application for leave to appeal dismissed with costs (without reasons) September 27, 2007.

Catchwords:

Property -- Condominiums -- Condominium corporation -- Statutory fiduciary duty -- Statutory duty of care -- Remedy for breach -- Special costs award -- Personal liability of directors and officers in the context of the management and direction of condominium corporation -- Application brought by Respondents seeking a declaration that strata councils elected on May 13, 2002 and February 27, 2003 acted in a manner significantly unfair to the Respondents by using monies from the operating funds to pay legal fees -- Respondents' petition brought under s. 33 of the Strata Property Act, S.B.C. 1998, c. 43, seeking an order requiring the Applicants to indemnify the strata corporation for the legal expenses -- Whether the Applicants cannot be found to be in a conflict of interest because of their good faith reliance on lawyer's advice -- Whether Applicants by following the advice of legal counsel have satisfied any duty of care owed, either statutory, fiduciary, or otherwise, and acted in good faith -- Whether the award of special costs was wrong in law and principle -- Strata Property Act, S.B.C. 1998, c. 43, s. 31, 32, 33.

Case Summary:

In the Respondents' petition brought under s. 33 of the Strata Property Act, S.B.C. 1998, c. 43, they sought an order requiring the Applicants to indemnify the strata corporation for the legal expenses. Edwards J. granted the petition. Edwards J. found the strata council members to have acted in a manner which was significantly unfair to the Respondents by using monies from the operating fund to pay legal fees. They are jointly and severally liable for the repayment to the Strata Corporation of \$190,338.99 and to pay special costs awarded. A majority of the court of appeal dismissed the appeal.

Counsel:

G. Stephen Hamilton (Hammerberg, Altman, Beaton & Maglio), for the motion.

Scott Griffin (McCarthy, Tetrault), contra.

Chronology:

1. Application for leave to appeal:

FILED: May 24, 2007. S.C.C. Bulletin, 2007, p. 825.

SUBMITTED TO THE COURT: August 20, 2007. S.C.C. Bulletin, 2007, p. 1132.

DISMISSED WITH COSTS: September 27, 2007 (without reasons). S.C.C. Bulletin, 2007, p. 1311.

Before: McLachlin C.J. and Charron and Rothstein JJ.

Procedural History:

Judgment at first instance: Respondents' petition granted: the strata council members were found to have acted in a manner which was significantly unfair to the Respondents by using monies from the operating fund to pay legal fees; they are jointly and severally liable for the repayment to the Strata Corporation of \$190,338.99 and to pay special costs in the amount of \$150,000. Supreme Court of British Columbia, Edwards J., August 23, 2005.

Neutral citation: 2005 BCSC 1209.

Judgment on appeal: Appeal dismissed with costs. Court of Appeal for British Columbia (Vancouver), Levine and Low JJ.A. (concurring), Prowse J.A. (dissenting in part), March 27, 2007.

Neutral citation: 2007 BCCA 183; [2007] B.C.J. No. 583.

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