

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan NW422 v.
Khlybov,*
2016 BCSC 285

Date: 20160120
Docket: S159782
Registry: Vancouver

In the Matter of the *Strata Property Act*, S.B.C. 1998, c. 43

and

**In the Matter of the Application for the Wind-Up of
Strata Plan NW422**

Between:

**The Owners, Strata Plan NW422, and each of the individuals set out in
Appendix “A” to this Petition**

Petitioners

And

**Evgueni Alexandrovitch Khlybov, Tatiana Evguenievan Khlybov,
and each of the parties set out in Appendix “B” to this Petition**

Respondents

Before: The Honourable Mr. Justice Silverman

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:

P.J. Roberts

Counsel for the Respondent, Khlybov:

H.C. Luitingh

Counsel for various Respondent Financial
Institutions:

A. Bury

Place and Date of Hearing:

Vancouver, B.C.
January 20, 2016

Place and Date of Judgment:

Vancouver, B.C.
January 20, 2016

[1] **THE COURT:** These are oral reasons. If a transcript is ordered, I reserve the right to edit, although that process will not involve a change in the decision or in the reasoning.

[2] The petitioners, who are a strata corporation and most owners of the strata corporation, wish to sell the property in which they live and which is the main asset of the strata corporation. This application is brought by a person that they have nominated as a liquidator and who, by this order, will be appointed formally as a liquidator, and I am being asked to endorse all of the various decisions that have been made by the corporation on the way to this application.

[3] The intention is that everything will be sold and the corporation will be wound up. A developer is the intended purchaser, and I am being asked to approve the agreement with them to that effect. The *Strata Property Act* requires that I be satisfied of a number of things before granting the orders sought. Counsel has taken me through these in great detail, and I am satisfied with respect to them.

[4] The main order sought is that I endorse a vote of the owners, which was almost but not quite unanimous with respect to this. Out of 21 owners, 20 voted in favour. One person did not show up. That one person is represented here by counsel and is not opposed to the applications, but simply takes no position. That has caused the application to be in the form of an application under s. 52 of the *Act*, there having been a three-quarter majority. There is certainly much more than three quarters here. It will be slightly more than 95 percent, with the one person not voting. The application asks pursuant to s. 52 of the *Act* that I declare the vote to be unanimous.

[5] It is necessary pursuant to 52(3) that I be satisfied that:

(3) On application under subsection (2), the court may, if satisfied that the passage of the resolution is in the best interests of the strata corporation and would not unfairly prejudice the dissenting voter or voters, make an order providing that the vote proceed as if the dissenting voter or voters had no vote.

[6] I am certainly satisfied with respect to all of that, and I do make that order. I am told and I accept, and there is evidence for it before me, that the sale price is somewhat more than the aggregate value of each of the units when individually added together. I do approve the sale to Concert Real Estate Corporation in the amount of \$5,090,000.

[7] It is important to note that there is nobody opposed to this. I have already noted the one person who takes no position. And similarly, all financial institutions and charge holders are also involved in the negotiating process that has resulted in the order that is before me and the application that is before me and supports the application that is made.

[8] There are a number of terms to the order. It is not necessary for me to go through them in detail. Those that I do not mention here, it does not mean that they are not being ordered. I am granting the order as sought. The highlights are that I do declare the vote where 20 people voted in favour of this application to be unanimous. When that order is filed in the Land Title Office, the strata plan in question will be dissolved.

[9] The liquidator is hereby approved by me as the person to be the liquidator, and will have the authority and powers of the liquidator as noted in the application.

[10] There are a number of terms with respect to what the Land Title Office will require, and I am satisfied those are appropriate. There are several terms with respect to the protection of the charges of the various financial institutions. As I have indicated, their counsel was involved in the negotiations, and I am satisfied that they are properly protected and all of those are appropriate.

[11] There are also a number of terms with respect to the purchase and sale agreement that indicate how the funds will be handled and a number of other

administrative-style terms. It is a great day when nobody opposes. A lot of smiles in the gallery. I am signing the order now and returning it to counsel.

"SILVERMAN J."