

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Buckerfield v. The Owners of Strata Plan
VR. 92,*
2018 BCSC 839

Date: 20180511
Docket: S184934
Registry: Vancouver

Re: *The Strata Property Act*, S.B.C. 1998 c. 43

Between:

**Mary Maxey Buckerfield, Gregory Neil Carlisle,
Jonas Gary Dubas, Patrick John Malpas,
Paulo Alexandre Martins, Gwendolyn Joan Boilevin,
Elizabeth Krassnig, Sandra Gail McCrone,
Aini Marjatta Kajaan, Brendan McCabe,
Shirley Kathleen Knight,
Karen Lynne Balshaw, Barrie Edward Balshaw,
Joseph Zoltan Bako**

Petitioners

And

**The Owners of Strata Plan VR. 92,
The Members of the Strata
Council of Strata Plan VR. 92**

Respondents

Corrected Judgment: The text of the judgment was corrected at paragraph 4 on
May 29, 2018.

Before: The Honourable Mr. Justice Brundrett

**Oral Ruling
(In Chambers)**

Counsel for Petitioners: J. Dubas

Counsel for Respondents: M. Jhaj
D. Chung

Place and Date of Trial/Hearing: Vancouver, B.C.
May 11, 2018

Place and Date of Judgment: Vancouver, B.C.
May 11, 2018

[1] **THE COURT:** This matter deals with the potential voluntary winding up of a strata corporation and the appointment of a liquidator. I say potential because the windup has not proceeded yet.

[2] The strata complex in issue is known as Granville West and is located at 1770 West 12th Avenue, Vancouver. It is a three-storey building comprising 41 strata titles. The responsible strata corporation for the building is the respondent Strata Plan VR. 92.

[3] The petitioners are a group of owners in the building. They apply for various declarations to restrict the potential marketing and listing for sale of the common assets, common property or lands of the strata plan. In particular, they ask this court to impose a requirement for approval by a supermajority of the owners before the Strata Council can retain a realtor to solicit offers on the building.

Background

[4] Counsel for the petitioners, Mr. Dubas, advised that he effectively represents the approximate 40 percent minority ownership group who oppose the sale of the building.

[5] In 2017, the respondent Strata Council started to receive requests from realtors about the possible sale of the property. It was speculated at the hearing that this could be due in part to changing market conditions including the expected construction of a future SkyTrain route near Granville West.

[6] In May 2017, the Strata Council held a town hall meeting with the owners to receive a presentation about the strata windup process. At the conclusion of the session, the Strata Council understood from the owners that they were in favour of conducting a straw poll to determine owners' interest in taking the next step and listing the property for sale.

[7] On July 1, 2017, the Strata Council distributed an informal ballot to the owners asking them to advise if they were interested in engaging a realtor to list the

building. On July 24, 2017, the responding ballots were counted. Twenty-four owners were agreeable to listing, fourteen were opposed and three owners did not respond.

[8] As a result, the Strata Council indicated its intention to move forward and engage a realtor. In response, Mr. Dubas commenced the present legal action arguing that the Strata Council was not acting in accordance with the *Strata Property Act*, S.B.C. 1998, c. 43 in engaging a realtor without a supermajority of at least 75–80% support of the ownership in the building. He has been joined in the petition by other owners who oppose the sale of the building.

[9] The matter languished for a time while the Strata Council obtained legal advice on the issue. On March 27, 2018, the Strata Council provided a retainer to the law firm of Lawson Lundell. The retainer was within the legal budget for the Strata Council included in the annual budget for the strata for the fiscal year ending March 31, 2018.

[10] The Strata Council has since decided to call a special general meeting on May 28, 2018, to ask the owners to vote on a resolution of whether or not to engage a realtor to obtain offers from developers for the building. In addition to the May 28th special general meeting, the annual meeting of the Strata Council is set for May 31, 2018.

Legal Framework

[11] The *Strata Property Act* was amended as of July 28, 2016, so that strata owners could terminate a strata corporation with an 80% majority vote: Bill 40, *Natural Gas Development Statutes Amendment Act*, 4th Sess., 40th Parl., British Columbia, 2015; OC 592/2016, (2016) BC Gaz II; see also Report No. 79, *Report on Terminating a Strata*, (Vancouver: BC Law Institute, 2015).

[12] Previously, strata termination required a unanimous vote among owners with authorization from all charge holders and lenders. Sections 272 and 277 of the *Strata Property Act* now provide that a vote to cancel a strata plan and become

tenants in common can occur by way of the passing of a resolution with 80% approval at an annual or special general meeting.

[13] Under the new rules, the Court must oversee the sale to ensure that it is carried out fairly and in the best interests of the owners, and that it will not result in significant confusion and uncertainty in the affairs of the strata corporation or the owners: s. 273.1 and s. 278.1 of the *Strata Property Act*. The two sets of provisions address the two possible routes available to strata corporations in seeking to wind themselves up voluntarily: namely with or without a liquidator. Here it is speculated that if the sale went ahead, a liquidator would be necessarily involved in order to streamline the process. Hence ss. 277 and 278.1 would be operative.

[14] As indicated by the provisions I have referred to in the *Strata Property Act*, no strata corporation can be wound up, cancelled or dissolved without a resolution passed by 80% of the members and court approval. Should the matter proceed to a vote and pass by 80% of the owners, the court will then consider whether to confirm the winding up resolution, having regard to factors such as whether it is in the best interests of the owners, whether there is significant unfairness to those solved and any significant confusion and uncertainty over the matter.

[15] This Court has had a chance to review recent case law in respect of the amendments to the *Strata Property Act*: *The Owners, Strata Plan VR2122 v. Wake*, 2017 BCSC 2386; *The Owners, Strata Plan VR 1966*, 2017 BCSC 1661; *The Owners, Strata Plan VR2702 (Re)*, 2018 BCSC 390; and *Strata Plan NWS837 (Re)*, 2018 BCSC 564. All of these decisions have dealt with a review *after* a resolution for voluntary wind-up has taken place. Here, the wind-up vote has yet to occur.

Discussion

[16] This matter was initially before me on April 24, 2018, for an injunction application. The matter could not proceed that day due to time constraints. However, I issued an interim order adjourning the application to today's date, such application now proceeding by way of the full petition and the petitioners' request for an order

restricting the respondents from listing for sale or marketing the common assets and/or the common property in the meantime.

[17] The petitioners ask me to read into the *Strata Property Act* greater procedural protections for the owners. In particular they ask me to exercise my inherent jurisdiction and my powers under s. 164 and s. 165 of the *Strata Property Act* to declare that a three-quarter or 80% vote is required before the Strata Council can retain a realtor to solicit offers on the building, which offers would be subject to final approval of the owners. The petitioners argue that I should infer from the various provisions of the *Strata Property Act* that the Strata Council is prevented from moving forward with retaining a realtor without such a vote from the owners.

[18] While I recognize this is fairly new ground in that the recent amendments to the *Strata Property Act* mean that this precise issue has not been litigated before, I would decline to impose upon the Strata Council a requirement for a supermajority vote of ownership approval before the retention of a realtor to solicit offers.

[19] First, I do not read the provisions in the *Strata Property Act*, which the petitioners cite, or the authorities provided to me, as directly mandating the requirement of a supermajority vote in order for the Strata Council to retain a realtor by signing a listing agreement to secure offer(s) for a sale which is in any event conditional upon the wind-up resolution by the owners: see, for instance, ss. 71, 78-82, and 105 of the *Strata Property Act*. In particular, I do not read the retention of a realtor as a change in use of common property, an alteration of common property or the disposal of land by the strata corporation engaging the supermajority requirements set out in some of those other sections. Hence, the normal default voting threshold of a majority vote would apply to the decision to approve a listing agreement: s. 50 of the *Strata Property Act*.

[20] Second, the petitioners' position is inconsistent with the *dicta* in the *Wake* decision, the appeal of which I am told is currently on reserve in the Court of Appeal. In *Wake*, Madam Justice Loo emphasized the value of ensuring that owners are informed every step of the way, that the process is transparent and that all owners

are provided with any information they seek, answers to any questions they have and any documents they request: para. 112.

[21] The Court in *Wake* also confirmed that the Strata Council is permitted to solicit offers from the property before the wind-up and sale resolutions are passed and stated that a majority vote is required to give the Strata Council authority and direction to start the process of investigating the option of selling the strata. Loo J. indicated as follows paras. 116 and 122 of her reasons:

116 The opposing respondents contend that neither the strata corporation or council has the authority to market and sell all of the strata lots because it cannot sell what it does not own. Only the liquidator has that authority. If developers are interested in acquiring The Hampstead for redevelopment, then the first step is for council to vote on a resolution under s. 277 giving the name and address of the liquidator, and to approve of the matters in s. 277(3), including dissolving the strata corporation and surrendering to the liquidator each owner's interest in the strata lands. After the court has confirmed the liquidator under s. 278.1, then under s. 279, within 30 days of being appointed, the liquidator applies to court for an order confirming his appointment and vesting in the liquidator, all of the lands.

...

122 I am unable to accept the opposing respondents' argument on this point. The purpose of the *SPA* wind-up provisions is to allow a supermajority of 80% of the owners to approve a resolution to cancel the strata plan. Protection of the dissenting owners is provided by court oversight of the sale. If the interpretation urged by the opposing respondents is correct, then court oversight for the dissenting owners is limited to basically approving the liquidator and not much more. That cannot have been the intent of the legislation.

[22] While the petitioners' argument differs somewhat here, I would apply the *dicta* from *Wake* in the present context. That is to say, the requirement for a supermajority to approve a resolution to cancel the strata plan is fully dealt with by the wind-up provisions of the *Strata Property Act* and need not occur at the front end of the process.

[23] Third, the additional front-end requirement the petitioners seek is premature and overly interventionist at this point. A vote may not be necessary at all if the realtor is unable to obtain a favourable offer on the building. As well, the owners and the Strata Council are in the best position to weigh the competing considerations as to whether to take preliminary steps in gathering greater information about the

marketability of the building. The upcoming special and annual general meetings of the ownership are the proper forum in which to debate matters such as the decision to retain a realtor through the use of funds available to the Strata Council.

[24] Fourth, as referred to in *Wake*, I am of the view that the requirements of 80% final approval of the owners and Court approval of any proposed sale set out in s. 277 and s. 278.1 of the *Strata Property Act* provide adequate protection for the rights of minority or opposing owners in circumstances such as this. At the end of the day no sale can go forward without approval of 80% of the owners and approval of the sale by the Court.

[25] Fifth, with respect, the interpretation that the petitioners urge upon me does not appear to be in keeping with the recent amendments to the *Strata Property Act*, which were intended to make it easier for strata corporations to wind themselves up voluntarily: *The Owners, Strata Plan VR2702 (Re)* at para. 12, citing *The Owners, Strata Plan VR 1966*. In particular, a 75–80% requirement to take a preliminary step (such as the retention of a realtor) would seem to me to unnecessarily introduce a cumbersome procedural requirement, make it difficult for the Strata Council to solicit offers so that the owners judge the benefits of a wind-up for themselves, and fail to allow for the possibility of a substantial increase in ownership support if highly favourable offers come in.

[26] I am fully aware that the possible wind-up of the strata property is a matter of great concern and interest to the owners of the Granville West building, many of whom are elderly individuals who have lived in the building for years and presumably have grown accustomed to this place as their home. I am sure that even these preliminary steps cause some consternation and worry to long-term owners and residents of the building.

[27] However, I agree with the respondent Strata Council that the petitioners' application is premature. A procedural safeguard is in place to ensure that if any sale of the building occurs, the sale will not be finalized without approval of 80% of the

owners and the Court's scrutiny of the terms of the sale having regard to the overall fairness to the owners amongst other factors.

[28] Consequently, as a statutorily mandated process is in place to govern the possible winding up of the strata corporation with appropriate protections for the interests of opposing owners, I would not interfere at this point in the unfolding of the process and the determination of the owners' wishes with respect to this matter.

[29] As to the petitioners' other attempts to limit other future actions of the Council in exploring the marketability of the building, such as through the expenditure of strata council funds, I am equally hesitant at this early point to place advance limitations on the Council's ability to move forward with the early stages of exploring the wind-up process.

[30] The respondent Strata Council indicates that it understands that it cannot expend legal funds in excess of its budgeted amount without receiving a three-quarter vote of the owners and advises that it does not intend to do. To the extent that there are concerns over future actions once they have actually been undertaken, the petitioners may apply for additional relief.

[31] In all the circumstances, despite Mr. Dubas' able submissions and recognizing that this is an important, stressful and probably highly emotional issue for many of the owners, I would not impose the additional requirement the petitioners' seek on the Strata Council's ability to gather information about a possible sale, explore marketability on a preliminary basis and canvass the interest of owners as to whether to proceed with a sale. Nor am I inclined to grant any of the other remedies to which the petitioners refer, such as an injunction or further delay.

[32] As I said, if 80% of the owners eventually approve the sale of the building, the matter will return to this Court, at which point the issue of the propriety and fairness of the proposed sale of the building can be fully litigated, as has been done in the other cases I mentioned. I have no doubt that at that point the interests of all owners will be heard, and an opportunity will be had for any concerns to be expressed.

Moreover, the parties can expect at that point that the review provisions of the *Strata Property Act* will be applied in accordance with the rule of law and procedural fairness to all parties.

Disposition

[33] The petition is dismissed.

Costs

[34] This is a relatively new area of property law and a large group of minority owners have brought the matter forward to the Court requesting guidance on the issue. In the circumstances I would order that each side bear its own costs.

“Brundrett J.”