IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan VR2122 v. Wake,*
2017 BCSC 2386

Date: 20171222
Docket: S176056
Registry: Vancouver

2017 BCSC 2386 (CanLII)

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 VR2122

Between:

The Owners, Strata Plan VR2122,
Jeffrey William Otto, Maria Paula De Jesus Machado,
Soriah Begum Kanji, Alan Paul Kostiuk,
Susan Janet Rollinson, Darcen Esau, Susan Esau,
Alan Giovanni Montero-Inglis, Grant Edmond Walter,
John Anthony Polcyk and Linda Polyck

Petitioners

And

Beverly Eileen Wake and each the parties set out in
Appendices “A” and “B” to this Petition

Respondents

Before: The Honourable Madam Justice Loo

Reasons for Judgment

Counsel for the Petitioners:	P.J. Roberts
Counsel for the Respondents, G. Bradbury, E.M. Cavin, S.H. Cavey, and G. Wallin:	G.S. Hamilton
Place and Date of Trial/Hearing:	Vancouver, B.C. December 4, 5, and 8, 2017
Place and Date of Judgment:	Vancouver, B.C. December 22, 2017

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I. INTRODUCTION

[1] This case concerns the proposed sale and winding-up of a strata corporation and its dissolution. It raises issues relating to the interpretation of the winding-up provisions of the *Strata Property Act*, S.B.C. 1998, c. 43 (*SPA*).

[2] The Owners, Strata Plan VR2122, known as The Hampstead, is a residential strata corporation in Vancouver's West End. The petitioners are The Hampstead Strata and the registered owners of six of the 33 strata lots, including all but one of the strata council members. The respondents listed in Appendix A are the registered owners of the remaining 27 strata lots. The respondents listed in Appendix B to the petition are the financial charge holders registered against title to various individual strata lots. Like the owners, the charge holders are parties to this proceeding pursuant to section 278.1(3) of the *SPA*. The respondents Gloria Bradbury, Edwin Cavin, Shehnaz Cavey, and Goran Wallin are each a registered owner who I may at times refer as the opposing respondents.

[3] The petition seeks an order confirming, pursuant to ss. 278.1 and 284 of the *SPA*, a wind-up resolution passed by the owners at a special general meeting ("SGM") on June 15, 2017 and/or alternatively on November 21, 2017. The petition also seeks approval of the sale of The Hampstead to Townline Ventures Inc. ("Townline") pursuant to the terms of a purchase and sale agreement dated March 27, 2017 (the "PSA"). The resolutions at both SGMs passed with the requisite vote threshold being met (80% to wind-up, 75% to approve a sale).

[4] The opposing respondents contend, in broad terms, that the petition is a nullity, the petitioners have misconstrued the statutory scheme for winding-up, and that the process surrounding the winding-up resolutions is not in the best interests of the owners, is significantly unfair, and would cause significant confusion and uncertainty.

[5] The petitioners also seek an order amending the petition to include the November 21, 2017 resolution. The application to amend is opposed by the opposing respondents on the basis that the first resolution of June 15, 2017 did not

give the name and address of the liquidator in accordance with s. 277(1)(3), and the interest schedule referred to in s. 278 did not name the City of Vancouver ("City") as a respondent.

[6] It is helpful to review the applicable provisions of the *SPA*.

II. THE LEGISLATION

[7] On November 17, 2015 Bill 40 (or the *Natural Gas Development Statutes Amendment Act, 2015*, S.B.C. 2015, c. 40) received Royal Assent and subsequently came into force on July 28, 2016. Bill 40, among other things, amended the *SPA* by implementing the recommendations made in the British Columbia Law Institute *Report on Terminating a Strata* No. 79, February 2015 ("BCLI 2015 report") by reducing the unanimous consent provisions for winding-up and terminating a strata corporation to 80%. The BCLI 2015 report addressed the problems with requiring unanimous consent:

> **A. An Overview of the Problem**
>
> There are many reasons that may motivate a strata to seek termination. These reasons can range from changes in land-use policies to financial pressures to a simple desire on the part of owners to revert to a different ownership system. A recent report noted three such fact patterns that can cause people to want to terminate a strata:
>
> - A strata building requires so much remedial work that it makes more sense to knock the building down and build a new one in its place than to undertake the work.
> - A low-rise strata building is in an area that is rezoned to enable higher-rise developments, and there is profit to be made by the property owners in knocking down the low-rise property and building a higher-rise property in its place.
> - A strata building (or buildings) [is] situated in a larger area (e.g. a few blocks) that could be redeveloped as part of a broader urban renewal project.
>
> …
>
> But many people see problems lurking just over the horizon, especially in connection with the first point on this list. This view is largely based on the simple passage of time. … Structural deterioration forces difficult decisions on strata-lot owners. The life of a building can be extended. But renewing buildings can entail extensive, costly repairs....

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Other developments since 1966 could also exert pressure on stratas. Foremost among these developments are long-term trends in land use and residential development. Land for housing has become increasingly scarce in many British Columbia municipalities, particularly in the Lower Mainland. As a result, land values have spiraled upward. In addition, low-density, greenfield development has fallen in favour. The policy of many municipalities has been more and more to encourage infill residential development at higher densities. This combination of increasing land values and policies in favour of higher-density housing may begin to encourage owners in older stratas to consider termination as a prelude to redevelopment.

A third consideration exists at a conceptual level. People have long acknowledged that strata legislation "reflects the combination of several legal concepts and relies on, and to a degree incorporates by reference, principles drawn from several different areas of law." Within a single legislative framework, strata laws incorporate areas of law." The values that inform these rules can be in tension. On the one hand, property law tends to value individual autonomy, permanence, and stability. On the other, corporate and contract law value majority-rule decision-making, flexibility, and adaptation to changing circumstances. Tensions between these values can be especially acute in high-stakes termination disputes. Striking the right balance in the legislation poses an ongoing challenge for policy makers (pp. 9-11).

…

The main concerns rest on the unanimity requirement. It is widely conceded that it's very difficult, if not impossible, to obtain unanimous consent in all but the smallest stratas. This means that majorities may often find their wishes thwarted. As a result, many strata owners will suffer significant financial losses. And the broader society may also find its plans for urban renewal and redevelopment to be frustrated. For these reasons, most jurisdictions avoid making unanimous consent the lynchpin of their termination regimes (pp. 51-52).

…

A unanimous-consent requirement can also act as an obstacle to responding to changing circumstances. Strata owners may underestimate the need to make difficult decisions as the strata ages. This can result in a deteriorating strata imposing negative effects on the majority of its owners and the surrounding community. Among the reasons for bringing in new termination rules in *Strata Property Act* was to respond to a concern that the old system did not provide enough flexibility for stratas facing difficult questions about redevelopment and that it failed to recognize the variety of occasions when termination and redevelopment could be appropriate and the diversity of ways in which termination and redevelopment could be carried out (pp. 53-54).

…

Unanimous consent is also more closely aligned with the property law roots of stratas. Investment in real estate is often predicated on property law's stable, predicable rules, which value permanence and certainty. Changing those rules can feel like an imposition to people who have bought into stratas

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> relying on the previous rules. In particular, moving from a termination scheme based on unanimous consent to a scheme with a lower threshold can seem like an expropriation of some of the value of the strata to many people. It is perhaps for this reason that such proposals have often been greeted with public outcry (pp. 54-55).
>
> [Footnotes omitted.]

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[8] Although a resolution to cancel a strata plan can be passed by an 80% vote, there is court oversight which is intended to address any significant unfairness alleged by any owner, charge holder, or creditor. The strata corporation is required to apply to court for an order confirming a wind-up resolution, and the court, in determining whether to confirm the wind-up resolution, must consider the best interests of the owners, the probability and extent of significant unfairness to one or more owners, and the probability and extent of significant confusion and uncertainty.

[9] A transcript of an excerpt from the Official Debate of the Legislative Assembly (British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 40th Parl, 4th Sess, Vol 31, No 3 (5 November 2015) at 1340 (Hon R Coleman) dealing with Bill 40, at page 10100, reads:

> Finally, this bill amends the Strata Property Act. Some strata corporations in British Columbia are more than 50 years old. Many of these strata corporations want or need to be wound up. This may be because the building is at the end of its life cycle or the owners have found a better or, perhaps, more profitable use for the land or want to redevelop it and gain that benefit and stay there.
>
> Right now in British Columbia, unlike most Canadian jurisdictions, a unanimous vote is needed to voluntarily terminate a strata. It is very difficult to get unanimous agreement. It can also be a challenge getting everyone to vote or locating absentee owners. So what we did with this, when this came to us a couple of years ago, is – at our request – we asked the B.C. Law Institute to review the rules around terminating strata corporations.
>
> They recommended to us that the vote be changed to …. Eighty percent of all voters must vote in favour to voluntarily terminate a strata rather than 100 percent. They recommended that, after the vote, a court order be required in order to make sure that the courts would give legal precedent with regards to this. This is so the courts can ensure that the interests of any dissenting owners and charge holders are considered.
>
> There was strong stakeholder support for these recommendations in strata properties and across the strata ownership piece, as we did our consultation.

[10] Effective July 28, 2016, pursuant to s. 277(1) of the *SPA*, strata owners became able to terminate the strata corporation by an 80% vote of all eligible voters, instead of the former unanimous voting requirement.

[11] Division 1 of Part 16 of the *SPA* deals with voluntary wind-up without a liquidator where there is a vote to cancel a strata plan and become tenants in common. Those provisions are not applicable here. The interpretations of Divisions 2 and 3 of Part 16 are at issue, so I set out for convenience those provisions:

Division 2 – Voluntary Winding Up With Liquidator

Application of *Business Corporations Act* to voluntary winding up of strata corporation

276 (1) (1) Except as otherwise provided in this Act and the regulations, the provisions of the *Business Corporations Act* that apply to a voluntary liquidation of a company apply to the voluntary winding up of a strata corporation with a liquidator and, for that purpose,

(a) a reference to "registrar" in the *Business Corporations Act* as it applies for the purposes of this Act must be read as a reference to the registrar as defined in this Act,

(b) a reference to "commencement of the liquidation" in the *Business Corporations Act* as it applies for the purposes of this Act must be read as a reference to the date on which the unanimous resolution referred to in section 277 of this Act is passed, and

(c) a requirement in the *Business Corporations Act* as it applies for the purposes of this Act that documents must be filed with the registrar must be read as a requirement that the documents must be filed in the land title office.

(2) Division 10 of Part 10 and section 324 of the *Business Corporations Act* do not apply to the voluntary winding up of a strata corporation with a liquidator.

(3) A person commits an offence who contravenes section 327 (2) or 335 of the *Business Corporations Act* as it applies for the purposes of this Act and sections 428 to 430 of the *Business Corporations Act* apply in relation to those offences.

Disposal of books and papers of strata corporation

276.1 If a strata corporation has been wound up under this Division, the liquidator is responsible for the care and custody of the strata corporation's records and documents for 2 years after the date of cancellation of the strata plan, but not longer.

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Appointment of liquidator

277 (1) To appoint a liquidator to wind up the strata corporation, a resolution to cancel the strata plan and appoint a liquidator must be passed by an 80% vote at an annual or special general meeting.

(2) A liquidator must have the qualifications of a liquidator that are required by the *Business Corporations Act*.

(3) The resolution must give the name and address of the liquidator and approve all of the following:

(a) the cancellation of the strata plan;

(b) the dissolution of the strata corporation;

(c) the surrender to the liquidator of each owner's interest in

(i) land shown on the strata plan,

(ii) land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and

(iii) personal property held by or on behalf of the strata corporation;

(d) an estimate of the costs of winding up;

(e) the interest schedule referred to in section 278.

Interest Schedule

278 (1) The interest schedule must meet any requirements as to form and content that are required by this Act and the regulations, and must do all of the following:

(a) state whether the strata corporation holds land in its name, or has land held on its behalf, that is not shown on the strata plan;

(b) identify land shown on the strata plan and land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, by legal description sufficient to allow the registrar to identify it in the records of the land title office;

(c) list the name and postal address of each owner;

(d) list the name, postal address and the estimated value of the interest of each holder of a registered charge against the land;

(e) list the name, postal address and interest of each creditor of the strata corporation who is not a holder of a registered charge against the land;

(f) list each owner's share of the proceeds of distribution in accordance with the following formula:

$$\frac{\text{most recent assessed value of an owner's strata lot}}{\text{most recent assessed value of all the strata lots in the strata plan, excluding any strata lots held by or on behalf of the strata corporation}}$$

(2) If there is no assessed value for the owner's strata lot or for any strata lot in the strata plan, an appraised value

(a) that has been determined by an independent appraiser, and

(b) that is approved by a resolution passed by a 3/4 vote at an annual or special general meeting

may be used in place of the assessed value for the purposes of the formula in subsection (1) (f).

(3) If a strata corporation has a schedule of interest on destruction that was required under section 4 (g) of the Condominium Act, R.S.B.C. 1996, c. 64, or a similar schedule that was required under any former Act, that schedule determines the owner's share of the proceeds of distribution on the winding up of the strata corporation and for that purpose replaces the formula in subsection (1) (f).

Confirmation by court of winding-up resolution

278.1(1) A strata corporation that passes a winding-up resolution in accordance with section 277, if the strata plan has 5 or more strata lots,

(a) may apply to the Supreme Court for an order confirming the resolution, and

(b) must do so within 60 days after the resolution is passed.

(2) For certainty, the failure of a strata corporation to comply with subsection (1)(b) does not prevent the strata corporation from applying under subsection (1) (a) or affect the validity of a winding-up resolution.

(3) A record required by the Supreme Court Civil Rules to be served on a person who may be affected by the order sought under subsection (1) must, without limiting that requirement, be served on the owners and registered charge holders identified in the interest schedule.

(4) On application by a strata corporation under subsection (1), the court may make an order confirming the winding-up resolution.

(5) In determining whether to make an order under subsection (4), the court must consider

(a) the best interests of the owners, and

(b) the probability and extent, if the winding-up resolution is confirmed or not confirmed, of

(i) significant unfairness to one or more

(A) owners,

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(B) holders of registered charges against land shown on the strata plan or land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, or

(C) other creditors, and

(ii) significant confusion and uncertainty in the affairs of the strata corporation or of the owners.

Vesting order

279 (1) Within 30 days of being appointed, the liquidator must apply to the Supreme Court for an order confirming the appointment of the liquidator and vesting in the liquidator

(a) land shown on the strata plan,

(b) land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and

(c) personal property held by or on behalf of the strata corporation

for the purpose of selling the land and personal property and distributing the proceeds as set out in the interest schedule.

(2) The court may grant the order if satisfied that

(a) the requirements of section 277 have been met, and

(b) if the strata plan has 5 or more strata lots, the winding-up resolution under section 277 has been confirmed by an order of the court under section 278.1.

(3) For the purposes of subsection (1), the liquidator is appointed on the date the winding-up resolution under section 277

(a) is passed, if the strata plan has fewer than 5 strata lots, or

(b) is confirmed by an order under section 278.1, in any other case.

Filing vesting order

280 (1) The liquidator must deliver a certified copy of the vesting order under section 279, accompanied by the interest schedule, to the registrar.

(2) The registrar must file the order and interest schedule if satisfied that

(a) the legal description of the land in the interest schedule is sufficient to allow the registrar to identify it in the records of the land title office, and

(b) the liquidator will have a good, safeholding and marketable title to the land.

(3) When the order is filed, the liquidator must notify the owners, registered charge holders and other creditors identified in the interest schedule by registered mail to their addresses given in that schedule.

Effect of filing vesting order

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281 When the vesting order is filed

(a) the strata plan is cancelled,

(b) the registrar must register indefeasible title in the name of the liquidator to

(i) the land that was shown on the strata plan immediately before it was cancelled, and

(ii) the land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and

(c) the personal property of the strata corporation vests in the liquidator.

Approval of disposition

282 (1) Before any land or personal property is disposed of, the liquidator must obtain the approval of the disposition by a resolution passed by a 3/4 vote at an annual or special general meeting, or the disposition is void.

(2) The resolution may specify the conditions under which a disposition may be made.

Filing of application for dissolution

283 The registrar must not file the application for dissolution referred to in section 343 (1) of the *Business Corporations Act* as it applies for the purposes of this Act unless that application is accompanied by a Certificate of Strata Corporation in the prescribed form stating that the final accounts referred to in the application have been approved by a resolution passed by a 3/4 vote at an annual or special general meeting.

Division 3 – Court Ordered Winding Up

Application for court order to wind up strata corporation

284 (1) An owner, a mortgagee of a strata lot or any other person the Supreme Court considers appropriate may apply to the Supreme Court for an order winding up the strata corporation.

(2) On application by a person referred to in subsection (1), the court may make an order appointing a liquidator to wind up the strata corporation.

(3) In determining whether to make an order under subsection (2), the court must consider

(a) the best interests of the owners, and

(b) the probability and extent, if the liquidator is appointed or not appointed, of

(i) significant unfairness to one or more

(A) owners,

(B) holders of registered charges against land shown on the strata plan or land held in the name of or on

behalf of the strata corporation, but not shown on the strata plan, or

(C) other creditors, and

(ii) significant confusion and uncertainty in the affairs of the strata corporation or of the owners.

Winding up

285 Division 2 applies to a winding up under this Division except that the Supreme Court

(a) may vary or dispense with any of the provisions in Division 2,

(b) may impose any conditions and give any directions that it thinks fit for the purpose of the winding up,

(c) has for the purposes of this Division the powers referred to in section 160, and

(d) may vary its order.

III. BACKGROUND

A. The Hampstead Strata

[12] The Hampstead is located at 1188 Cardero Street at the corner of Cardero and Davie Streets, in the area of the West End known as Lower Davie. The building, which was constructed in 1988, is a four-storey, wood-frame structure with 33 units and associated common property that is managed by a strata council of six owners. The site size is approximately 17,292 square feet with approximately 132 feet of frontage along Davie Street and 131 feet of frontage on Cardero Street. Over the years, repairs to the building have included the replacement of two front entranceway structural wood beams, the roof, the complex hot water tanks and piping, and re-caulking of the building.

[13] The Hampstead, which is now almost 30 years old, is facing increasing capital expenditures to maintain and repair the building and physical infrastructure. Between September 2014 and December 2015 the owners contributed $495,177 through special levies and capital replacement funds to maintain the common properties.

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[14] A depreciation report dated March 22, 2014 prepared by MacArthur Vantell Limited, construction engineers ("MVL"), is the most current depreciation report for The Hampstead. Earlier reports by MVL showed areas of high moisture in the building envelope. The March 22, 2014 report makes various recommendations, including replacement of the deck membranes, partial replacement of the exterior wall area stucco and related work, and replacement of all of the hot and cold water domestic plumbing within the next five years at an estimated cost of over $265,000. The total anticipated repairs costs for 2018 is more than $675,000 which would result in a levy of approximately $20,000 for each of the 33 units.

[15] Knowing the likely future maintenance and repair costs, in early 2016, the strata council began exploring the possibility of a sale of the entire building to a third party. Council was aware that the redevelopment value of The Hampstead was at a peak based on recent City re-zoning which increased the floor space ratio for property in the Lower Davie area. Under the City's West End Community Plan, the Hampstead's property is designated for redevelopment with a redevelopment building height potential of 58 metres (190 feet), including a 20% non-market (social) housing density requirement.

[16] The West End is currently undergoing extensive redevelopment and densification. The neighbourhood is changing and will chance considerably in the near future. The area around The Hampstead has a number of current and anticipated redevelopment projects underway. Property at 1188 Bidwell Street about one block northwest from The Hampstead on Davie Street, is currently the subject of a redevelopment proposal for the construction of a 22-storey mixed-using building. The site of the Gabriola Mansion at 1523 Davie Street is next door to The Hampstead, and is the subject of a rezoning application to convert the mansion into 16 market rental units and four new infill market rental townhouses to be developed on the northeast corner of the property. Kitty corner to The Hampstead on Davie Street, in the same block as 1188 Bidwell, the property is currently the subject of a redevelopment proposal for the construction of a 23-storey mixed-use building with one level of commercial and 22 storeys with 158 residential units. There are

redevelopment plans for a 21-storey residential tower at 1754-1172 Pendrell Street, about one and a half blocks northwest of The Hampstead. About three blocks southwest, construction has begun on a 19-storey mixed-use building. Directly across the street from The Hampstead, 1661 Davie Street (which encompasses the entire block and included the English Bay Safeway) is being redeveloped to accommodate a 21-storey and 22-storey building with 319 dwelling units, commercial, and retail stores. The Safeway closed on August 31, 2017 and signage on the site indicates that the nearest Safeway is at 1766 Robson Street.

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[17] The City's 21-page Development Permit Staff Committee Report dated July 2016 for 1661 Davie Street is informative and describes the applicable by-laws and guidelines (page 10):

> **Applicable By-laws and Guidelines:**
>
> West End Community Plan
>
> The West End Community Plan provides a framework to guide positive change, development and public benefits in the West End. The Plan identifies the need for an increase in the supply of affordable housing for all household types, and has policy to achieve a variety of housing choices and community facilities to attract and retain a vibrant workforce, including families with children. The Plan provides for new rental housing opportunities through additional density and rezoning applications in the areas noted as Corridors. The plan notes that Corridors are generally the newer areas of the community well- served by transit, services and amenities, where the majority of new housing and job space has been built over the past 40 years and which also provide additional opportunities to accommodate job space and housing that meet the needs of the community. For market housing the Plan requires that 25% of units in new multi-family developments have two and three bedroom units for families designed in accordance with the High Density Housing for Families with Children Guidelines, which should be located on the lower floors.
>
> ...
>
> The Lower Davie Corridor extends between Denman Village and Davie Village and consists of two sub- areas. Area A, in which the application is located, runs between Denman and Cardero Streets and comprises two blocks of mixed use and commercial buildings. In Lower Davie, densities were increased for projects that provide secured rental housing, but existing height limits were maintained. … Mixed-use developments with continuous commercial frontages were supported. To enhance public spaces and improve walkability on the commercial streets, the Plan recommends widening sidewalks with building setbacks and providing additional seating and other pedestrian priority measures.

[18] Subject to the conditions precedent in the PSA, including a court order, Townline intends to redevelop the Hampstead lands. The sale price in the PSA is $45.25 million. If the wind-up and sale is confirmed by the court, then each owner will receive roughly two and a half times as much than if each owner sold his or her unit individually. The 2017 aggregate assessed value of all 33 strata lots is $18,367,000.

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Petition filed June 27, 2017

[19] The petition in this proceeding was filed on June 27, 2017. Part 1 of the petition sets out the extensive and detailed orders sought, including:

> 1. An order confirming the resolution passed at the special general meeting of the strata corporation, The Owners, Strata Plan VR2122, held on June 15, 2017 ….
>
> 2. An order appointing John McEown, CA-CIRP, of Boale, Wood & Company Ltd, of 1140-800 West Pender Street, Vancouver B.C., V6C 2V6, as the Liquidator of the strata corporation, The Owners, Strata Plan VR2122, upon the filing of a certified copy of this order in the Land Title Office pursuant to paragraph 4 of this Order.
>
> …
>
> 4. An order that, upon the filing of a certified copy of this order in the Land Title Office, the interest of each of the Petitioners and the Respondents set out on Appendix "A" to the Petition (collectively, the "Strata Owners") in:
>
> (a) the Hampstead Lands; and
>
> (b) the Strata Personal Property.
>
> be surrendered to and vests in the Liquidator, subject to the mortgages, assignments of rent and liens registered on title to Strata Lots 1 to 33 of the Hampstead Lands and as set out in Appendix "B" to the Petition.
>
> …
>
> 6. An Order confirming that the authority and powers of the Liquidator includes:
>
> …
>
> (b) to employ or retain such other professional services or advisors as are reasonably necessary for the winding up of the strata corporation … including legal counsel, realtors and appraisers;
>
> …

> (d) to deal with creditors of the strata corporation … including the payment, compromise or settlement of any claims by those creditors;
>
> (e) to pay costs, charges and expenses properly incurred and to be incurred in relation to the winding up of the strata corporation ….
>
> (h) to distribute the proceeds from the sale of the Hampstead Lands and the Strata Personal Property in accordance with the Interest Schedule.
>
> …
>
> 7. An order approving the sale of the Hampstead Lands to Townline Ventures Inc. (the "Purchaser") pursuant to the terms of the Purchase and Sale Agreement between the Purchaser and The Owners, Strata Plan VR2122 dated for reference March 27, 2017 (the "Purchase & Sale Agreement").
>
> 8. An Order confirming the Interest Schedule and that the Interest Schedule shall be the interest schedule for the purposes of sections 278 and 280 of the *Strata Property Act* and shall be used to determine each individual Strata Owners' share of the proceeds of distribution on the winding-up of Strata Plan VR2122, including the proceeds of sale of the Hampstead Lands and the Strata Personal Property.

[20] There is no issue that all of the owners listed in Appendix A to the petition, and all of the registered charge holders in Appendix B, have been served. Only the four opposing respondents (12% of the owners) are formally opposed to the confirmation order and have filed a response to the petition. None of the parties listed in Appendix B to the petition have filed a response.

[21] An initial hearing date of August 8, 2017 was adjourned by consent order to August 28, 2017. On August 28, 2017 there was no judge was available to hear the petition. In addition, the estimated length of the hearing was changed from one day to two days, so that the earliest available hearing dates were December 4 and 5, 2017.

[22] On September 21, 2017, The Owners, Strata Plan VR 1966, 2017 BCSC 1661 (*Bel-Ayre*), another strata wind-up case, was decided. In *Bel-Ayre*, Milman J. dismissed the petition on the grounds that the wind-up resolution failed to set out in the interest schedule forming part of the wind-up resolution, "the estimated value of

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the interest of each holder of a registered charge against the land" required by s. 277(3)(e) and 278(1)(d) of the *SPA*.

[23] The June 15, 2017 SGM wind-up resolution for The Hampstead did not set out the name and address of the proposed liquidator. Instead, the resolution provided that "the Owners approve the appointment of a liquidator of the Strata Corporation with the particular liquidator to be determined" by council. However, council identified a liquidator soon after the SGM as the petition filed on June 27, 2017 identifies John McEown, CA-CIROP, of Boale, Wood & Company Ltd. of 1140-800 West Pender Street, Vancouver B.C., as the liquidator.

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[24] As the petition hearing was delayed until December 4 and 5, 2017, council decided to hold a second SGM on November 21, 2017 for the purpose of voting on a second resolution to wind-up and cancel the strata plan. The only material difference was that the November SGM resolution sets out the name and address of the liquidator.

[25] At the November 21 SGM, all 33 of the strata owners were present or represented by proxy. The resolution to wind-up and sell pursuant to the terms of the PSA received 27 affirmative votes, six negative votes and, requiring an 80% majority vote, passed again.

B. The Process

[26] Both the petitioners and the opposing respondents have provided extensive and detailed evidence relating to the process. I will outline what I consider to be important or significant events.

[27] Council meeting minutes dated March 9, 2016 state that "Council has been approached by developers inquiring about potential development of our site." An e-mail dated April 6, 2016 from council president, Jeffrey Otto, to all of the owners stated that "council has been approached by a few parties interested in purchasing our building for future development as a tower." Through a series of e-mails from Mr. Otto, the owners were invited to weekly information sessions to hear from

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various developers and brokers. There were five consecutive meetings held between April and May 2016. What became clear to the owners is that The Hampstead is much more valuable as a redevelopment site than the aggregate 2017 assessed value of all 33 strata lots. There were also discussions at the meetings about the anticipated costs of future repairs to the building and infrastructure.

[28] On April 30, 2016, Ms. Bradbury e-mailed Mr. Otto:

> From: Gloria Bradbury
> Date: April 30-16 7:17 PM
> To: Jeff Otto
> Attach: Liquidation Information.pdf
> Subject: Selling the Hampstead
>
> Hi Jeff,
>
> The first order of business will be to determine if there are at least 27 owners (80%) interested in selling.
>
> I am mainly concerned that we receive independent legal advice immediately if 80% of owners are willing to sell. …
>
> A trustworthy lawyer will provide us with unbiased counsel so that we can explore all aspects of dealing with this decision. …
>
> A strata lawyer at the earliest stage will help us as a group to carefully consider the pros and cons, and other aspects we would need to consider, before deciding whether we choose a broker or a developer. Professional independent advice is critical at this early stage and will clarify the issues that will help us to decide the best route.
>
> <u>We have a hugely valuable commodity, we all own this building and more particularly the land it sits on. We are located in the best possible location on transit, near amenities, with the expressed interest by the City to redevelop the site. We should recognize our strengths and if agreed by all to sell, make sure we have the best advice possible in the process.</u>
>
> …
>
> I've attached the CHOA [Condominium Home Owners Association of BC] Bulletin 300-674 Liquidating a Strata that appeared Feb 26, 2016 in The Province newspaper. ...
>
> Thanks for gathering everyone’s input.
>
> Regards,
> Gloria
>
> [Underlining added.]

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[29] On May 22, 2016, Ms. Bradbury e-mailed Mr. Otto:

> From: Gloria Bradbury
> Date: May 22-16 11:45 AM
> To: Jeff Otto
> Cc: Tony Gioventu
> Attach: Tony Gioventu Correspondence.pdf
> Subject: Offer from Mr. Tony Gioventu, CHOA
>
> Hi Jeff
>
> I have been in correspondence with Mr. Tony Gioventu, Executive Director, CHOA who has kindly offered to meet with our Strata Council to provide guidance related to the potential sale of our property.
>
> I've attached a copy of that correspondence for your information and follow up.
>
> …
>
> Gloria

[30] Ms. Bradbury's e-mail to Mr. Gioventu states in part:

> From: Gloria Bradbury
> Sent: Monday, May 16, 2016 10:20 AM
> To: Tony Gioventu
> Subject: Thank you
>
> Dear Mr. Gioventu,
>
> I am responding to your kind offer to meet with our Condominium owners.
>
> I recently wrote the IAG regarding my concerns about High Density Redevelopment in the West End and the specific impacts as a Condo owner.
>
> …
>
> In light of the overwhelming redevelopment interest in our property, I contacted our Strata Council to suggest that we engage independent legal counsel to act on behalf of all owners. I think others have suggested the same.
>
> …
>
> I am hopeful that Council will act on these suggestions sooner rather than later.
>
> …
>
> Gloria Bradbury

[31] On May 24, 2016 Mr. Otto sent an e-mail to all of the owners providing an update of "the process of selling our property." He stated that the next step was to convene an SGM, and among other things "hire legal counsel to guide us as a first

step." He went on to state that Council had identified two law firms who had "recent experience in navigating the process we are about to consider". The firms were Clark Wilson LLP and Lawson Lundell LLP.

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[32] Ms. Cavey states that on July 5, 2016 there was an SGM at which the two law firms gave presentations. An e-mail dated June 30, 2016 from Ms. Bradbury was also read aloud. Her e-mail reads:

> From: Gloria Bradbury
> Date: June-30-16 1:40 PM
> To: Jeff Otto
> Subject: Resolution Issues
>
> President and Council, VR2122
>
> As I understand it, the purpose of the SGM is to consider the Resolution, the proposed Resolution is problematic and faulty.
>
> Here are the concerns I have about it.
>
> 1. The Resolution wording assumes that we want to dissolve the strata corporation.
>
> 2. If the expenditure is to hire a lawyer for the express purpose of dissolving the Strata the assumption is that we already agreed to dissolution.
>
> 3. There has been no clear confirmation that the required 80% of the Owners want to dissolve the Strata corporation. Owners have not had an opportunity to discuss what they want to do.
>
> Unless and until that decision is clarified for all owners, it is impossible to vote on the Resolution as proposed.
>
> The assumption made by the Resolution, pre-empts each owner's right to make their own decision.
>
> …
>
> I am requesting that Council take the necessary steps to ensure that this Resolution is withdrawn.
>
> As I am unable to attend, I respectfully request that my concerns be openly discussed at the meeting.

[33] Ms. Cavey states that each of Ms. Bradbury's concerns were considered irrelevant or dismissed. Ms. Cavey states that she felt intimidated but before the owners voted on the resolution to engage a lawyer, she asked that the ballots be cast in secret, and that was done. Subsequently all of the owners were asked to express an opinion regarding their choice of the law firm.

[34] On July 14, 2016, Mr. Otto e-mailed the strata's property manager, informing him about the result of the resolution and requesting that the property manager engage Lawson Lundell LLP "to assist us in navigating the process of potentially selling our property." A letter dated July 19, 2016 from Lawson Lundell LLP to The Owners, Strata Plan VR2122 sets out the terms of the engagement agreement.

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[35] Council organized and held meetings for all of the owners at which three commercial real estate brokerage firms made presentations. Taking into account owner feedback, and after obtaining a resolution from the owners, on September 19, 2016, council chose Cushman & Wakefield ("Cushman") to market and sell The Hampstead. On September 23, 2016, council formally retained Cushman and signed an exclusive listing agreement.

[36] In the months that followed, Hamian Consulting, the project managers hired by council, frequently communicated with the owners about the wind-up process. They sent out 13 communiques providing updates and seeking input from owners. They organized five information meetings for owners between November 9, 2016 and June 7, 2017. This included information meetings on March 27 and April 19, 2017 for the purpose of briefing owners on the offer to purchase being considered by council. It also included an information meeting on June 7, 2017, one week prior to the June 15, 2017 SGM, at which owners were able to ask questions about the PSA.

1. ***The Marketing and Sale of the Hampstead Strata***

[37] Cushman undertook an extensive marketing campaign, conducted a bidding process, and had discussions with the City about redevelopment possibilities. Cushman created marketing materials about The Hampstead and established an on-line data room for use by interested parties. On November 16, 2016, Cushman launched a marketing campaign and over 1,800 e-mails were sent to potentially interested parties, of which over 900 were viewed and over 35 expressions of interest were received. On January 18, 2017, Cushman sent a second e-mail blast to over 1,400 parties announcing a bid process with a deadline of February 15, 2017. A third e-mail blast was sent on February 9, 2017 reminding interested parties

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of the bid deadline. By February 15, 2017, Cushman had received three offers for The Hampstead. Cushman met with the council on February 16, 2017 to compare and discuss these offers. Following those discussions, council identified Townline's offer as having the highest price and the best ancillary terms. Cushman was then involved in discussions with Townline to formalize the offer.

[38] Once Townline was identified as the best offer, council negotiated a letter of intent and then the PSA. By unanimous agreement, council resolved to recommend the PSA to the owners. Council members Jeffrey Otto and Soriah Kanji signed the PSA on March 27, 2017. The relevant terms of the PSA include:

> (a) a price of $45.25 million, cl. 2.2;
>
> (b) a "completion date" that is 90 days after the court order confirming the wind-up and approving the PSA, cl. 6.1(c);
>
> (c) the owners keep the contingency reserve fund, cl. 10.2; and,
>
> (d) the owners are entitled to stay in their units for six months, rent free, after the completion date.

[39] “Completion Date” is defined to mean:

> [T]he later of November 2, 2017 and the first Business Day that is sixty (60) days after the date the Vendor advises the Purchaser that the last of the Third Conditions set out in subsection 6.1(c) has been satisfied or waived.

[40] Section 6.1 of the PSA provides:

> 6.1 Conditions Precedent
>
> The obligation of the Purchaser and the Vendor to complete the purchase of the Property on the Completion Date is subject to the following conditions precedent being satisfied, or waived if expressly permitted hereunder, in the manner and within the time provided herein: …

[41] It is a condition precedent of the PSA becoming enforceable that The Hampstead:

> (a) approve and ratify the PSA at a special general meeting by a resolution passed by an 80% majority (cl. 6.1(b)); and

> (b) obtain a court order approving the winding-up of the Hampstead Strata, the appointment of the liquidator and the approval of the PSA (cl. 6.1(c)).

[42] On March 27, 2017 and April 19, 2017, information meetings were held for the owners to discuss Townline's offer. Cushman representatives attended these meetings and answered questions from the owners. At the meetings, Cushman distributed to owners a package of material that described Townline's offer and the marketing process that had been conducted. Cushman also provided the owners with a comparative summary of other recent sales in the area.

2. *The June 15, 2017 SGM*

[43] The notice of the June 15, 2017 SGM was sent to all owners on May 11, 2017. The notice and a communique about it were also e-mailed to all owners on May 15, 2017 by the project managers. The project managers also provided a copy of the PSA to all owners.

[44] At the June 15 SGM, 32 of the 33 strata units attended in person or by proxy. Without objection, the SGM was chaired by Edward Wilson, a lawyer and partner with the firm Lawson Lundell LLP. All owners who wanted to speak were given an opportunity to do so. One owner invited anyone opposed to the wind-up and sale to articulate their concerns and to take the opportunity to persuade others to also vote "no". No one chose to say anything. The only person who responded to this invitation to speak was Ms. Bradbury. She told the meeting she had "no issue" with the PSA and had had her lawyer look over it. She did not say anything else.

[45] A secret ballot was conducted on the wind-up resolution. The resolution received 28 votes in favour (84.8%) and four against. There was one unit that did not vote and that was treated as a no vote. Requiring an 80% majority vote to pass, and receiving a vote of 84.8%, the wind-up resolution was passed.

[46] Following the June SGM, and as directed by the wind-up resolution, council identified John McEown of Boale Wood & Company Ltd. as the liquidator. No owner

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expressed concern that the name and address of the liquidator was absent from the June 2017 SGM wind-up resolution.

3. _The November 21, 2017 SGM_

[47] The owners were sent an e-mail and communique on October 10, 2017 by the project managers advising them of the November SGM and the reasons for it. On October 17, 2017, notice of the SGM was sent to all owners. The only change to the proposed resolution was the inclusion of the liquidator's name and address.

[48] On November 2, 2017, council sent an e-mail to all owners advising them of an information meeting to be held on November 14, 2017. Notices of both this information meeting and the November SGM were posted in various places in the lobby of The Hampstead. On November 7 and 13, 2017, the project managers sent e-mails and communiques to all owners advising them of the November 14, 2017 information meeting and the topics to be discussed.

[49] About 25 owners attended the November 14, 2017 information meeting. The meeting began with John O'Donnell, a Townline representative, speaking to the owners about Townline's continued commitment to the PSA and the anticipated timeline for the redevelopment. Owners were then given an opportunity to ask Mr. O'Donnell questions. Mr. O'Donnell answered the questions asked of him and then left the meeting. The Hampstead lawyers and Cushman representatives then made remarks to the owners and answered questions asked of them.

[50] At the close of the information meeting, one of the owners spoke and encouraged any one opposed to the sale to take the opportunity to tell the other owners of their reasons. He encouraged everyone to listen respectfully to any opposing views and commented that hearing these opposing views would allow those in favour of a sale to better understand the concerns of the opponents. No one chose to make any remarks.

[51] However, the next day, an unattributed poster was put up in The Hampstead’s elevator. The poster was a copy of an article dated September 23,

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2017 by Amy Chen about the Vancouver developer Omni pre-selling a downtown Vancouver condominium in Hong Kong for "cheaper than in Canada". The poster was critical of what the Cushman representatives had said at the information meeting about the present value of The Hampstead. On the instructions of council, the project managers circulated a copy of the poster to all owners by e-mail on November 17, 2017.

[52] On November 17, 2017, the project managers also sent an e-mail to all owners summarizing what had taken place at the information meeting and included the following response from Cushman to the poster:

> At the information session my comment was not in reference to Chinese purchasers in general as buyers of the final condo suites. Instead, I was referring to Mainland Chinese developers that now appear to be generally relatively more hesitant to buy development sites than before - in particular where there is a requirement to have non-market housing in the same tower as market housing. Most of the Mainland Chinese buyer interest is where there they believe the market is quite high end with views. As a side note: Omni, with whom we have done 4 deals, ranging from $29 million to over $300 million declined to offer on 1188 Cardero Street.

[53] On November 21, 2017, the project managers again sent an e-mail to all owners reminding them of the November SGM to be held that night, and included copies of the November SGM Notice.

[54] At the November 21, 2017 SGM, all 33 strata lots were represented in person or by proxy. Mr. Wilson chaired the meeting. There was discussion on the proposed resolution following which a secret ballot was conducted. The resolution received 27 affirmative votes (81.8%) and six negative votes. Needing an 80% majority, the resolution passed.

C. Owner Responses to the wind-up of The Hampstead Strata

[55] There are differing reasons given by the owners who favour the wind-up and sale and those who are opposed. The reasons given by owners who support the wind-up and sale include that:

(a) a sale will allow some owners to buy a larger apartment with a second bedroom "to assist my aging mother with her health issues" and others to "continue to support my mother" or better help aging parents;

(b) the price being paid is far in excess of the individual unit value;

(c) the cost of repairs is individually prohibitive;

(d) the entire neighbourhood is changing and there will be "several years of construction dust and noise". A sale will avoid "a state of limbo for the coming years";

(e) a sale will provide "financial stability" and allow some owners to retire and/or financially assist other family members;

(f) a sale will allow an owner to stay in the West End after being laid off and the likelihood of finding a similar job remote;

(g) a sale will allow families with or expecting young children to buy larger apartments or have the financial security to raise their families;

(h) a sale will allow an owner to address "various health issues including failing eyesight" and avoid the effort of selling their own unit; and

(i) a sale will allow some owners to move closer to grandchildren and spend more time with family.

[56] It is important to set out in more detail the reasons provided by the opposing respondents for opposing the wind-up and sale:

- Gloria Bradbury: Ms. Bradbury has lived at The Hampstead for 26 years. Stanley Park is less than a five minute walk away. The Hampstead and English Bay is just two blocks away. Ms. Bradbury regularly walks there to spend quiet time. The neighbourhood provides her with all the conveniences she chooses to enjoy as a senior. She can easily walk to her medical appointments, massage therapist, dentist and optometrist. She shops in the neighbourhood and knows some of the shopkeepers. She often attends evening concerts at the Orpheum and Roedde House nearby. She feels safe walking at night in the neighbourhood and public transits across the street. Many of her neighbours have been her neighbours for more than 20 years. That gives her a sense of comfort and security in the community. Stability is important to her as a senior. In August 2015 she installed hardwood flooring in her unit to make it easier to upkeep. She can walk out the door of her suite directly into the outdoors. She values and enjoys her personal privacy and her home affords her that comfort.
- Edwin Cavin: Mr. Cavin was born in the West End at St. Paul's Hospital in 1961. He lived in and out of Vancouver over the years but moved to the West End in July 2000. He purchased his unit in 2003. The Hampstead provides him a convenient lifestyle and he usually does not need a car except to drive to work. His doctor and osteopath

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are in the West End and he has developed strong ties to the neighborhood.

- Shehnaz Cavey: Ms. Cavey purchased her unit in December 2010. She has been a resident of the West End since the fall of 2007, and has been involved in the life of the West End community through various volunteer activities. She has built strong friendships with other owners in the building and neighbours in the surrounding community. The location of her suite is invaluable. It is in very close walking proximity to all her essential needs. Ms. Cavey and her fiancé want to start a family, and believe that the proximity to doctors, child-care facilities, and the neighboring elementary school are invaluable. She likes the layout and high-functioning design of her suite. Ms. Cavey believes, through her research of the market, that her unit will be near impossible to replace.
- Goran Wallin: Mr. Wallin purchased his unit in 1994 as his home for the rest of his life, after renting in the West End since 1965. He took early retirement in 2005 due to a hip replacement caused by arthritis. He also has diabetes. Mr. Wallin decided before his disability worsened to renovate his condo to be wheelchair/disability friendly. In 2015 his renovation bill came to over $99,000, and he still owes $20,000. In the last three years he has paid separate assessed repairs for the building of $17,051.95. He would be devastated if he was forced to sell. In the last two years, he has had two falls, one with three broken ribs and the other with three fractures to his shoulder. He is dependent on public transport to attend dental, medical, laboratory and St. Paul's Hospital visits. It will be highly stressful for him to relocate to a new home or community.
- Natsume Quo: Ms. Quo or her late husband has owned a unit in The Hampstead since December 1988. The purchase was made with the intent that their daughter Lisa Nakamura, would live in the unit long-term and be gifted the property. Ms. Nakamura has a medical condition and requires medical assistance from her doctors that are located close to The Hampstead. She may require the additional space afforded by the layout for a live-in caregiver. She has established a life for herself in the community and would be displaced if she were forced to move.

IV. THE ISSUES

[57] The issues are:

1. Should the court grant the petitioners application to amend the petition; and, if the answer is in the affirmative;
2. Should the court make an order to wind-up the strata corporation, pursuant to s. 278.1 and/or s. 284(1).

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V. APPLICATION TO AMEND PETITION

[58] The petitioners seek to amend the petition to include the November 21, 2017 resolution, pursuant to Rule 16-1(19) and the inherent jurisdiction of the court.

[59] Part 2 of the petition, which sets out the facts on which the petition is based, ends with para. 9, which reads:

> 9. The Hampstead Strata held a special general meeting on June 15, 2017 (the "SGM") to consider resolutions to wind-up and cancel the strata plan and consider the approval of the Purchase & Sale Agreement. At the SGM, 32 of the 33 strata lots of the Hampstead Strata were present or otherwise represented by proxy. At the SGM, the resolution to wind-up the Hampstead Strata and sell it to the Purchaser pursuant to the terms of the Purchase & Sale Agreement received 28 affirmative votes and, requiring an 80% majority vote, passed.

[60] The application to amend the petition seeks to add para. 10 to read:

> On November 21, 2017, the Hampstead Strata held a second special general meeting to consider resolutions to wind-up and cancel the strata plan and consider the approval of the Purchase & Sale Agreement. At the SGM, all of the 33 strata lots of the Hampstead Strata were present or otherwise represented by proxy. At the SGM, the resolution to wind-up the Hampstead Strata and sell it to the Purchaser pursuant to the terms of the Purchase & Sale Agreement received 27 affirmative votes and 6 negative votes and, requiring an 80% majority vote, passed.

[61] The petitioners also seek to amend para. 1 in Part 1 of the petition such that the order sought is an order confirming the resolution passed at the June 15, 2017 SGM, or in the alternative, the November 21, 2017 SGM.

[62] The opposing respondents oppose the amendment on the basis that the June 15, 2017 resolution failed to give the name and address of the liquidator as required under s. 277(1)(3), and failed to comply with the interest schedule in accordance with s. 277(3)(e) by failing to name the City as a charge holder and as a party listed in Appendix B to the petition. They argue that the petition is therefore a nullity and cannot be amended.

[63] The City's charge arises out of these facts: a corporate landowner of, or at 1531 Davie Street entered into an agreement dated November 26, 1934 with the

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City in connection with sidewalk crossings. Under the terms of the agreement, the City gave permission to the landowner "to establish and maintain two crossings over the sidewalk" over the two lots, "to be situated on the west side of Nicola Street" (Nicola Street is the block west of Cardero Street), and for which the land owner indemnified the City. The agreement charged the two lots by way of an indemnity that was registered on December 14, 1934.

[64] Counsel for the petitioners informed the court that the City's charge was registered against a sidewalk on the common property, did not appear on any of the strata owners' registered interests, and was therefore not "picked-up" when the searches were conducted.

[65] However, the City has reviewed the petition, and takes no position as the City's charge is not affected by the relief sought by the petition. The 1934 charge will remain on title if the petitioners obtain the orders they seek for wind-up and sale.

[66] In my view, the omission of the City as a charge holder on the interest schedule, or as a party listed in Appendix B to the petition, is not fatal to the resolution, and did not invalidate it under s. 277.

[67] The next issue is whether the petition is a nullity on the ground that the first resolution on June 15, 2017 failed to give the name and address of the liquidator.

[68] The opposing respondents rely on *Bel-Ayre*, and *The Owners, Strata Plan LMS 888 v. The City of Coquitlam et al,* 2003 BCSC 941 (*City of Coquitlam*), where the strata corporation commenced a proceeding without first authorizing the action by a 3/4 vote resolution as required by ss. 171 and 172 of the *SPA*. The strata corporation subsequently passed a special resolution to proceed, and later a resolution authorizing it to continue with legal action. Cohen J. held that the defect was not curable and the action was a nullity: the 3/4 vote prior to commencing an action was a substantive requirement. Cohen J. stated:

> [39] …to give effect to the plaintiff's interpretation of ss. 171 and 172 as containing merely procedural requirements, non-compliance with which may

> be cured by the court, would confuse otherwise clearly worded provisions and create unnecessary confusion for owners, strata councils and strata corporations expected to read and understand the plain language of the *SPA* and govern their actions accordingly…
>
> [40] … merely because there may be no prejudice to a defendant in allowing a strata corporation to commence an action and obtain the requisite approval afterward, that does not satisfactorily answer the question of where the strata corporation obtained the power to commence the action in the first place…the plaintiff does not have capacity or status to act as the representative of the owners until the ¾ vote has been obtained…it is not, in my view, the function of the court to fashion a remedy which will cure a strata corporation's failure to acquire the capacity to sue by complying with the clear and unambiguous requirements of the *SPA*.

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[69] The opposing respondents say that here, the petitioners had no right to commence this proceeding before complying with s. 277, and that to find otherwise "invites uncertainty into the unambiguous requirements of the winding-up provisions." It "invites strata corporations to ignore the requirements of s. 277 with a view to 'correcting' non-compliance later after having launched legal action and taken steps in the winding-up process, which was not authorized by a valid resolution in the first place."

[70] In *Bel-Ayre*, the strata corporation argued that its failure to comply with s. 278(1)(d) was a "rectifiable procedural irregularity" that was curable by its amended petition, and that there was no evidence of any prejudice. Milman J. rejected these arguments. He considered "intent of the legislature in requiring value estimates to be listed in the interest schedule" (para. 45) and referred (para. 46) to the following passage from the BCLI 2015 report (p. 27):

> (d) Interest Schedule
>
> The interest schedule is this procedure's equivalent to the conversion schedule. It provides the roadmap for how the strata's property will be converted from strata-titled ownership to property held by the liquidator for the purpose of ratable distribution to the owners [citing s.278].
>
> Most of the information required under the interest schedule is the same as that required under the conversion schedule [citing ss. 273(1)]. The interest schedule also relies on the same conversion formula using assessed value of strata lots or, if assessed value is unavailable, appraised value [citing ss. 273(2)].
>
> The only significant difference between the two is that the interest schedule requires more information on creditors. Unlike the conversion schedule, the interest schedule requires the listing of "the name, postal address and

> interest of each creditor of the strata corporation who is not a holder of a registered charge against the land" [citing ss. 278(1)(e)]. Such a requirement is not necessary for the conversion schedule because these creditors will not be in existence if the strata corporation is proceeding by way of voluntary winding up without a liquidator. In a corporate winding up, a liquidator typically takes "more elaborate steps to identify creditors" than would be seen in a voluntary winding up without a liquidator [citing Andrew J. McLeod & Ian N. MacIntosh, *British Columbia Business Corporations Act & Commentary* (Markham , ON: Lexis Nexis Canada, 2011) at 55].

[71] Milman J. then stated:

> [48] The legislation treats the value estimates as one of the essential components of that roadmap. The legislature has thereby required that the liquidator be instructed by the owners through their vote as to the amounts that are estimated to be owing to their creditors. The approval of the winding-up resolution with its appended interest schedule is the only opportunity that the owners have to give the liquidator that instruction before his or her appointment.
>
> [49] If an owner finds an error in the value estimates or in any of the other items listed in the proposed interest schedule before it is approved, it can still be fixed prior to the approval vote by way of an amendment to the resolution under s. 50. Once the liquidator is appointed, however, he or she must ultimately distribute the proceeds of sale “as set out in the interest schedule” pursuant to s. 279. The interest schedule referred to in s. 279 is obviously the one approved by the owners in the winding-up resolution, not a subsequently amended one that might later come to be attached to the petition.
>
> …
>
> [51] <u>It follows that the value estimates approved as part of the interest schedule are an essential term of the liquidator’s mandate, rather than just another source of information that might affect the vote</u>. Without them, the winding-up resolution is not validly approved. In other words, <u>this was not just a mere “procedural irregularity” but an omission of substance.</u>
>
> [Underlining added].

[72] In my view, the name and address of the liquidator cannot be said to be essential to the liquidator’s mandate or the roadmap of the liquidation process. The essential information which must be included in a wind-up resolution are those items in s. 277(a) to (e), each of which forms part of the substantive content of the resolution. For similar reasons, the *City of Coquitlam* is distinguishable. The 3/4 resolution required by s. 171 was clearly an essential and substantive requirement of the *SPA*.

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[73] The individual petitioners also rely on s. 285(1) found in Part 16, Division 3 - Court Ordered Winding Up. For convenience, I set out the relevant provisions:

> **Application for court order to wind up strata corporation**
>
> **284** (1) An owner … may apply to the Supreme Court for an order winding up the strata corporation.
>
> (2) On application by a person referred to in subsection (1), the court may make an order appointing a liquidator to wind up the strata corporation.
>
> (3) In determining whether to make an order under subsection (2), the court must consider
>
> (a) the best interests of the owners, and
>
> (b) the probability and extent, if the liquidator is appointed or not appointed, of
>
> (i) significant unfairness to one or more
>
> (A) owners,
>
> (B) holders of registered charges against land shown on the strata plan or land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, or
>
> (C) other creditors, and
>
> (ii) significant confusion and uncertainty in the affairs of the strata corporation or of the owners.
>
> **Winding up**
>
> **285** Division 2 applies to a winding up under this Division except that the Supreme Court
>
> (a) may vary or dispense with any of the provisions in Division 2,
>
> …
>
> (c) has for the purposes of this Division the powers referred to in section 160, and
>
> (d) may vary its order.

[74] The opposing respondents argue that the petitioners cannot rely on Division 2, and in particular s. 285(a). However, I do not agree. Under s. 278.1(4) it is only the strata corporation that applies to court for an order confirming the winding-up resolution. Here, some of the petitioners are individual owners, and their application

can only be brought under s. 284(1). The *Bel-Ayre* decision did not consider s. 285(a) likely because the only petitioner was the strata corporation, and the application was made under s. 278.1.

[75] I conclude that the omission of the liquidator's name and address in the June 15, 2017 resolution was not fatal to the resolution, and the petition is therefore not a nullity. Further, the requirement to give the name and address of the liquidator can be dispensed with under s. 285(a). There is no suggestion that anyone has been prejudiced by the failure of the June 15, 2017 resolution to give the name and address of the liquidator, and that information was set out in the petition.

[76] The petitioners are at liberty to amend the petition on the terms set out in their application to amend.

VI. SHOULD THE COURT ORDER A WIND-UP AND SALE

A. Argument of the petitioners

[77] A strata operates as a democratic society in which each owner has many of the rights associated with sole ownership of real property, but in which, having regard to their co-ownership with the others, some of those rights are subordinated to the will of the majority. An equitable balance must exist between the independence of the individual owners and the interdependence of them all in a co-operative community: *2475813 Nova Scotia Ltd. v. Rodgers*, 2001 NSCA 12.

[78] Courts have accepted that it is a legitimate motive for owners to realize on and "maximize upon a substantial investment they own.": *McRae v. Seymour Village Management Inc.*, 2014 BCSC 714, which considered an application for the sale of Seymour Estates, a common law strata of 114 units. An owner wanted to take advantage of potentially increased density allowances in North Vancouver and redevelop the land, which required a sale of all of the strata lands. Most owners wanted to sell, but some did not. Fenlon J. (as she then was) stated at paras. 39 to 44:

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> [39] However, many of the hardships identified by the respondents are comparable to those relied on by Mr. Justice Ehrcke in refusing to order the sale of Cypress Gardens in the *Mowat* case. They are significant hardships that affect people at a fundamental level, literally where they live and in their day-to-day relationships with family and neighbours and the broader community.
>
> [40] The question is whether the hardships faced by the respondents justify refusing the sale desired by the majority of the owners. In the case of Cypress Gardens the situation was quite different because only 54 of the 177 owners wanted the property sold; less than one-third of the unit holders. The flip side of that is of course that in the Cypress Gardens case more than 70% of the owners wanted to stay in their homes and objected to the sale.
>
> [41] The percentage of owners who wish to sell is a factor in exercising judicial discretion under s. 6. That is evident from the direction in that section that if half or more of the owners want to sell, a sale must be ordered unless the opponent establishes a good reason to the contrary. That direction is not, of course, conclusive. It is not the end of the story, because s. 6 recognizes that justice requires in some cases that the order for sale desired by the majority should not be made because of the particular impact of a sale on the minority. Nonetheless, the percentage of owners seeking an order for sale is an important factor. Here 92% of the owners of Seymour Estates want to sell the property and maximize their investment. As this Court recognized in *Richardson v. McGuinness*, [1996] B.C.J. No. 2636 (S.C.), at para. 39:
>
>> [39] ... It is not inappropriate for persons to wish to protect and maximize upon a substantial investment they own.
>
> [42] Mr. Justice Low in the case of *Bourgeault v. Walton*, [1998] B.C.J. No. 1957 (S.C.), at para. 21 concluded:
>
>> [21] ... The law is clear that personal or commercial inconvenience is not sufficient reason to prevent owners legitimately realizing on their interests.
>
> [43] In the case before me more than 90% of the owners have concluded that a sale of the property will not only permit them to maximize their current investment but will also give them an opportunity to move into a new, modern unit which will not carry with it the risk of significant capital expenditures and which will be easier to both manage and sell in the future.
>
> [44] The respondents' view is, understandably, that it is not fair for them to be forced from their homes. I acknowledge how difficult that prospect is, but forced sale of co-owned property has been part of our law for a very long time. Shared ownership has advantages. It permits those who might not otherwise be able to own a home to do so, but it also has significant disadvantages -- a forced sale by the other co-owners is one of them.

[79] The *SPA* clearly contemplates that a wind-up and sale could occur despite opposition from up to 20% of the owners. For those owners who oppose a wind-up and sale, an order confirming the winding-up resolution is clearly not in the "best

interests of the owners”. However, that fact alone is not sufficient to overcome the view of the 80% plus majority who consider that a wind-up and sale is in their “best interests”. Therefore the “bests interests of the owners” factor requires a balancing of the competing individual views of whether a sale is appropriate or not.

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[80] In *Abdoh v. The Owners of Strata Plan KAS2003*, 2013 BCCA 270, the Court of Appeal referred to the appropriate considerations when reconciling individual and collective rights under the *SPA*:

> [20] In determining whether to come to the Abdohs’ aid, the judge referred to the scheme for reconciling individual and collective rights in the *Strata Property Act*. He considered:
>
> > a) the number of owners seeking relief;
> >
> > b) whether the order sought was in the best interests of the Strata Corporation; and
> >
> > c) whether inaction would unfairly prejudice the applicants.
>
> [21] In my opinion, these are all appropriate considerations.
>
> [22] The judge properly concluded that the contravention of the *Strata Property Act* or by-laws, if there was one, was of a trifling nature; the Strata Corporation therefore had no duty to demand removal of the Cooling Equipment or to take action to have it removed.

[81] The opposing respondents must establish something more than their respective individual views of why having to move from The Hampstead is not in their perceived best interests, if they are to establish that the proposed wind-up and sale is not in “the best interests of the owners.” They have not done so.

[82] The next step is for the court to consider the probability and extent, if the windup-up resolution is confirmed or not confirmed, of significant unfairness to one ore more of the owners. The onus is on the opposing respondents to establish the factors necessary to defeat an order confirming the winding-up resolution. There is no claim of significant unfairness to or by one or more of the owners, registered charge holders, or other creditors.

[83] The court must make a qualitative assessment of both likelihood and probability of “significant unfairness” or “significant confusion and uncertainty” and its

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"extent". Any significant unfairness or significant confusion and uncertainty must be of such an extent that it warrants the court to override the clear legislative ability for a strata corporation to wind-up and be sold by 80% or more of the owners. Where the applicable requirements of the *SPA* are met, to justify dismissing an application for a confirmation order, the court must find pursuant to s. 278.1(5) or 284(3) the probability of both "significant unfairness to one or more owners" and "significant confusion and uncertainty in the affairs" of the strata corporation.

[84] If the court confirms the winding-up resolution, each opposing respondent will receive between $1,179,355 and $1,638,683, depending on the size and location of his or her unit. It is not enough merely to assert that they believe that their unit will be nearly impossible to replace. There are comparable units for sale in the community, and with their sale proceeds, the owners and opposing respondents can remain in the community and the neighbourhood, if they wish, in comparable or better units.

[85] Craig Ballantyne, a vice-president with Cushman swore an affidavit on August 11, 2017 and set out the current market data relating to the affordability of the owners purchasing similar residential units in the West End:

1. There were 15 current or active MLS listings for low-rise (less than six stories), wood-frame condominiums ranging from $499,000 to $1,668,000 with 11 of the listings being less than $1 million;

2. There were 36 MLS listings for low-rise, wood-frame construction condominiums that sold since January 1, 2017. The selling prices range from $365,000 for 435 sq. ft. up to $1,085,000 for a 950 sq. ft. two-bedroom condominium;

3. There were 70 MLS listings for concrete construction condominiums ranging from $299,000 to $8,880,000 with 37 of those listings being under $1 million; and

4. There were 218 MLS listings for concrete construction condominiums that sold since January 1, 2017 with selling prices ranging from $225,000 to $6,200,000 with 156 of those sales being under $1 million.

[86] Mr. Ballantyne swore a further affidavit on November 28, 2017, presumably to ensure that the market data was current. At that time:

1. There were 14 current MLS listings for low-rise condominiums ranging in price from $410,000 to $1,150,000 with 12 of the listings being less than $1million;

2. Since January 1, 2017 there were 107 sales of low-rise condominiums with selling prices ranging from $350,000 for a 434 sq. ft. condominium, up to $1.645 million for a 1,573 sq. three-bedroom condominium with 98 of the 104 listings being sold for under $1million;

3. There were 56 MLS listings for concrete construction condominiums ranging from $229,999 to $8,880,000 with 23 of the 56 listings being under $1 million; and

4. Since January 1, 2017 there were 367 sales of concrete construction buildings ranging from $225,000 to $6,200,000 with 268 of the 367 sales being under $1 million.

[87] For owners of limited means and with mobility issues, there is a provincial program that provides financial assistance of up to $20,000 to assist in paying the cost of modifications to their home.

[88] More than 80% of the owners have confirmed twice, that they want to wind-up and sell The Hampstead. A sale will avoid costly future maintenance and repair costs that are inevitable as the building ages. A sale will allow the owners to realize a significant financial gain of an estimated two and a half times the market value if

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they were to sell their units individually. For many owners, the sale will put them on a more secure financial footing, allow them to remain in the West End in comparable or better residences, and/or allow them to retire or to financially help other family members. A sale will avoid the owners in the next few years, being surrounded by large development projects which will dramatically change the nature and character of the current neighbourhood of The Hampstead.

[89] Finally, Ms. Bradbury, one of the most vocal opponents to the wind-up and sale, unlike most of the owners, lives at The Hampstead only half of the time, and the remainder of the time, she travels or lives in Newfoundland. That her voice should receive special significance over more than 80% of the other owners who live at The Hampstead full-time defies logic.

B. Argument of the opposing respondents

[90] The petitioners have misconstrued the statutory scheme relating to winding-up and selling a strata corporation. Section 278.1(5) does not set out an exhaustive list of the factors that a court should consider. There are other factors that the court can and should take into account in determining whether to make an order confirming the winding-up resolution.

[91] However, on this point, I disagree. If the legislature had seen fit for the court to consider factors it considered appropriate, other than what is set out in s. 278.1(5) or 284(3), it would have stated so. The arguments of the respondents opposing the orders sought by the petition must fall within s. 278.1(5)(a) and (b) and, or s. 284(3)(a) and (b), that is, confirming the wind-up resolution is not in the best interests of the owners, the probability and extent of significant unfairness to one or more of the owners, and significant confusion and uncertainty in the affairs of the strata corporation or of the owners. I will, however, deal with the factors or reasons relied on by the opposing respondents for opposing the sale.

[92] The opposing respondents contend that when interpreting s. 278.1(5), courts should give greater emphasis to property rights as a home, rather than to property rights as a commodity or economic interest. That property rights should be given

more emphasis than other rights is echoed in many academic articles (see: A. Irving Hallowell, *"The Nature and Function of Property as a Social Institution"* (1942) 1 J. *Condominium, Private Takings, and the Nature of Property"* (2015) in B. Hoops et al, eds., *Rethinking Expropriation Law II: Context, Criteria, and Consequences of Expropriation* (The Hague, NL: Eleven), pp. 263-297.)

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[93] In a recent article by Douglas C. Harris, *Owning and Dissolving Strata Property*, 2017 50:4 UBC L Rev 935, the author states at pp. 941-942:

> [W]hat is at stake in the choice between a dissolution regime that presumes the need for unanimous consent among owners and one that presumes supermajority approval is sufficient to dissolve strata property. In brief, the choice between dissolution regimes is also a choice between protecting the capacity of owners to remain owners, or enhancing their ability to maximize the exchange value of property interests. This choice becomes clear when non-consensual dissolution, which results in the termination of individual property interests, is understood as a taking of property. A regime that facilitates the capacity of a majority to take the property interests of a dissenting minority enables strata property owners to maximize the exchange value of their interests, but at the cost of dispossessing the minority. Some owners who do not wish to transfer their interests will be forced to do so. Moreover, while the dissolution vote threshold is a particularly important determinant of the character of property in a strata property regime, the courts will also be deciding whether to defend continuing ownership or to enhance the ability to maximize exchange value when they decide contested dissolution cases.

[94] And further, at pp. 945-946:

> [D]issolution regimes that enhance the capacity of a majority of owners to take the property of a minority serve to maximize the exchange value of property interests for all owners. The fact that all owners maximize the exchange value of their property does not alter the fact that those who oppose dissolution suffer an involuntary loss of property.
>
> Justice Milman's decision not to confirm the Bel-Aire [sic] Villa strata property dissolution vote turns on this point. Non-consensual dissolution of strata property, he concluded, amounts to "an involuntary taking of a home." Where the taking of property is authorized by statute, he continued, the courts will apply the statutory requirements strictly. As a result, the Bel-Aire Villa strata corporation's failure to provide a statement estimating the value of the owners' interests following dissolution, as required under the *Strata Property Act*, invalidated the dissolution vote even though the absence of the information did not appear to have caused prejudice. In short, the process must be unimpeachable, at least when measured against the statutory requirements, because it results in the taking of property.
>
> [Footnotes omitted.]

[95] In *Bel-Ayre*, Milman J. used the word “home” and not “strata lot”, “fee simple”, or less emotive term, to describe what the majority were proposing to take from the one dissenting owner (p. 961). That suggests that the court should give greater emphasis to property rights as a home rather than to property rights as a commodity or economic interest.

[96] Professor Douglas C. Harris also supports the argument that as the opposing respondents acquired their units prior to Bill 40 and on the basis of a reasonable expectation that winding-up and sale would require their consent. At p. 962:

> In the immediate aftermath of this legislative change, when the newly reduced dissolution threshold is likely to produce a spike in attempts to dissolve strata property, courts should be attuned to claims of significant unfairness by those who face involuntary loss of property. In particular, the courts must reject the argument that strata property owners somehow consented to the possibility that they could be dispossessed by other owners on the strength of a supermajority vote. The claim that nonconsensual dissolution is part of the strata property package may become more persuasive over time, but hundreds of thousands of existing strata property owners in British Columbia acquired their interests on the basis of a reasonable expectation that dissolution required their consent. This should bear on the judicial interpretation of “significant unfairness”.

[97] Giving greater emphasis to protecting the right of owners to remain owners in their home, rather than enhancing the ability of owners to maximize the exchange or economic value of their property interests, are not binary choices: there is a spectrum, but the emphasis should be towards the taking of property or the home is your castle concept. The majority of the owners are distracted by the potential for a windfall profit. The role of the court is to ensure that the supermajority’s interest and desire to take advantage of this windfall profit does not come at the expense of disregarding the protection to be afforded to the minority, particularly when each of them purchased their unit prior to Bill 40 and expected that they could live in their unit for the rest of their lives, or as long as they wanted.

[98] There is an absence of jurisprudence interpreting the phrase “*best interests of owners*” under s. 278.1or s. 284(3)(a), but the test should be objective and ask what “reasonable owners would do in comparable circumstances.” In applying that test,

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"reasonable owners" should consider not just their own interests and expectations, but fairly weigh and account for the interests of other individual and societal interests, including:

- The interests of owners who want to remain living in the home of their choice, and the interests of owners who have invested substantial time and expense in renovating and maintaining their homes and who may be unable to afford a similar home in the same neighbourhood;
- the impact of redevelopment to the surrounding community;
- the loss of community heritage and the importance of preserving Vancouver's history;
- the environmental impacts of premature redevelopment: demolition of The Hampstead is unnecessary and promotes waste. The building is in good condition for a building of its age and future repair obligations are manageable;
- the displacement of owners from their community;
- the potential for profit is modest and should be a secondary consideration to the protection of societal and community interests;
- the protection of societal and community interests outweigh the opportunity for profiteering or avoidance of modest repair obligations. The ends do not justify the means;
- the law firm acted in a conflict of interest;
- the strata council breached its statutory fiduciary duties in relation to the winding up process; and
- the process surrounding the winding-up vote was flawed.

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[99] I will deal with the last three points in some detail, and with the remaining points in my concluding analysis.

Conflict of interest

[100] In their amended response to petition, the opposing respondents opposed the orders sought on the basis that it was not in the “best interest of owners”, on the ground that the “Owners did not receive independent legal advice regarding the winding-up process or the purchase and sale agreement with Townline.” During the hearing, the opposing respondents advanced this argument even further, and contend that Mr. Wilson acted unprofessionally and in a conflict of interest. Those allegations are serious ones.

[101] It is argued that Lawson Lundell LLP was in a conflict of interest from the outset based on its July 19, 2016 engagement which confirms that the firm was retained to act for the strata corporation, and “…. is in addition to and separate from an anticipated joint retained by a number of individual strata lot owners…regarding a petition to the court…”. The engagement letter states:

> Joint Retainer
>
> Our engagement is a joint retainer in that we will likely at some point in time (and in any event prior to going to court to seek approval of the wind up), also be acting for the Owners. While we are pleased to accept that joint retainer, there are some important considerations you and the Owners ought to be aware of.
>
> …
>
> 3. Though the interests of the Strata Corporation and the Owners whom we may represent do not currently conflict, it is possible that those interests could diverge or even conflict in the future. For example, some of the Owners may change their minds about whether or not to seek a court ordered wind-up of the Hampstead Strata or to sell to a developer. The Strata Corporation is entitled to obtain independent legal advice before you give us this consent or enter into this Engagement Agreement.

[102] It is not entirely clear to me when the opposing respondents requested and were delivered a copy of the engagement letter, although it appears to have been some time after the first SGM. However, based on the engagement letter, the opposing respondents contend that the individual owners formed the expectation

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that the law firm was representing their individual *and* collective interests. Moreover, from the outset, the law firm "already picked a side in terms of future representation," and the law firm picked the yes side. The owners, in particular, the opposing respondents, ought to have been informed from the outset that the law firm had established a loyalty to the yes side, so he or she could evaluate whether the information the firm was providing to them was truly independent and unbiased.

[103] There is no evidence that Lawson Lundell LLP entered into engagement or retainer agreements with any of the individual owners, *but* Mr. Roberts appears on this application on behalf of the strata corporation and some of the individual owners who are on the yes side. Mr. Roberts says that the individual or personal petitioners consented to being named as a party.

[104] Mr. Kostiuk, council vice-president, states that he and other members of council, attended a meeting at Cushman's offices in February 2017 to review the three bids that had been received. Before council chose Townline's bid, Mr. Wilson informed the council members that his firm had acted in the past on unrelated matters for all three bidders, but that his firm would not be acting for any of those bidders in connection to the proposed sale of The Hampstead. However, council agreed to have Mr. Wilson continue to act for The Hampstead. Mr. Kostiuk also recalls at an early meeting with the owners, an owner (he does not recall who) asked Mr. Wilson about possible conflicts of interest with developers. In answer to the question, Mr. Wilson informed those owners in attendance at the meeting that his firm had acted in the past for several large developers and that if any of those developers were successful bidders, his firm would not act for the developer on anything related to The Hampstead.

[105] The opposing respondents contend that Mr. Wilson did not go far enough.

[106] Ms. Cavey attaches to her affidavit the result of corporate searches which disclose Rick Ilich as a director of Townline, a disclosure statement dated March 26, 2013 relating to a limited partnership condominium development in Richmond known

as The Harmony, and a second amendment disclosure statement dated April 16, 2013 relating to a limited partnership condominium development in Surrey.

[107] It is argued that Mr. Ilich is the directing mind of the two limited partnerships, and therefore, Mr. Wilson ought to have disclosed more. He ought to have disclosed for how long he or his firm represented Townline, the nature and extent of his relationship with Mr. Ilich, whether for example, he and Mr. Ilich they sat on the same boards together, and precisely what his firm has done in acting for Townline. If he is unable to disclose what his firm has done in acting for Townline because that would disclose confidential information, then he was obliged to cease acting for Townline.

[108] Other than simply citing the Supreme Court of Canada decision in *Martin v. Gray*, [1990] 3 S.C.R. 1235 and Law Society of British Columbia, *Code of Professional Conduct for British Columbia*, chapters 3.41- 3.42, the opposing respondents refer to no case authority where the law relating to conflict of interest goes that far.

[109] I do not believe that Ms. Bradbury and Ms. Cavey, or the remaining opposing respondents, reasonably believed that Lawson Lundell LLP was acting for each of them individually, and looking after each of their individual best interests. Ms. Cavey was clearly obtaining information outside of what the law firm was providing to her, and Ms. Bradbury obtained her own independent legal advice.

[110] I do not find that the law firm was acting in a conflict of interest.

Council's breach of duties

[111] The opposing respondents maintain that the court should not order a wind-up and sale because council breached its express and implied duties to the owners. Duties imposed on a strata council are codified in the *SPA*, and they include:

- the duty to act honestly and in good faith with a view to the best interests of the strata corporation (s. 31(a));

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- the duty to exercise care, diligence and skill of a reasonably prudent person in comparable circumstances (s. 31(b);
- the duty to disclose a conflict of interest (s. 32);
- the duty to not treat an owner in a "significantly unfair" action, threatened action, or decision (s. 164).

[112] The *SPA* does not expressly set out the duties imposed on council under the winding-up provisions, but the court, in considering the interests of the minority opposed to a sale, ought to imply the duties that were imposed on the sales committee and the strata titles board under Singapore legislation by the Singapore Court of Appeal in *Ghee and others v. Dave and others*, [2009] 3 SLR. 109, [2009] SGCA 14 (*Ghee*) at paras. 168 and 169:

> 168 We shall now summarise our view of an SC's [sales committee] duties in respect of the sale price. *The SC is expected to act in the same manner as a prudent owner would in order to secure the best price for the property obtainable in the prevailing circumstances*. In our view this includes doing the following:
>
> > (a) acting with due diligence in appointing competent professional advisers;
> >
> > (b) marketing the property for a reasonable period of time to the largest number of potential purchasers in order to create the widest catchment of offers;
> >
> > (c) following up on all expressions of interest and offers, including carrying out sufficient investigations and due diligence to determine their genuineness (if any doubt exists);
> >
> > (d) creating competition (where reasonable) between interested purchasers;
> >
> > (e) obtaining independent expert advice on matters relevant to the decision to sell the property (including when and at what price to sell the property), such as an independent valuation, in particular:
> >
> > > (i) prior to settling on the final sale price;
> > >
> > > (ii) when the market is in a state of flux;
> > >
> > > (iii) when there are divergent views within the SC; or
> > >
> > > (iv) where the property is of an unusual nature or has mixed uses, *eg*, it is not purely

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residential or purely commercial, but is a mix of many types of use;

(f) waiting for the most propitious timing for the sale in order to obtain the best price;

(g) disclosing any personal interests on the part of its members that might conflict with the duty to obtain the best sale price, either prior to the appointment of the member having the interest (in the case of pre-existing interests) or well before the SC makes a decision to sell the property (in the case of post-appointment interests);

(h) ensuring that it has been properly informed of all potential conflicts of interests that may affect the advice it receives from any of its professional advisers; and

(i) seeking fresh instructions or guidance from the consenting subsidiary proprietors where it entertains a reasonable doubt that its original mandate no longer reflects the consensus of the consenting subsidiary proprietors (*eg*, due to a change in the prevailing circumstances).

169 To round up this summary, we add that, in relation to the application process to an STB [strata titles board], an SC or its representatives ought to:

(a) act in a transparent manner and provide all relevant information to all subsidiary proprietors, including those objecting to the application;

(b) assist the STB by making full disclosure of all relevant facts and circumstances that would explain how the decision to sell was reached; and

(c) refrain from acting in an adversarial role against the objecting subsidiary proprietors.

[113] I pause to give context to the roles of the SC and STB under Singapore legislation, by referring to the BCLI 2015 report at pp. 46 to 48:

4. SINGAPORE

Singapore's legislation provides for termination of a strata by court order or by its management corporation, but reformers have shown the most interest in Singapore's version of termination by sale. These provisions have been on the books since 1999, and they are detailed and extensive.

Singapore has an interesting staged quality to its threshold for initiating the process. The two levels are as follows:

- if the strata is 10 years or older, at least 80 percent of the owners, holding 80 percent of the total area of the lots, must consent to the sale;

> - if the strata is less than 10 years old, at least 90 percent of the owners, holding 90 percent of the total area of the lots, must consent to the sale.
>
> Once the applicable threshold is reached, the owners must enter into a collective sale agreement with a purchaser. The legislation contemplates that the agreement will be negotiated by a collective sale committee, elected from the ranks of the owners. The agreement must specify how the sale proceeds are to be distributed among lot owners. There is no default scheme of distribution specified in the legislation.
>
> The legislation contains a number of provisions designed to protect the interests of owners, particularly dissenting owners:
>
> - the owners must apply to the Strata Titles Board of Singapore–an administrative agency–for an order approving the sale;
>
> …
>
> - whether or not an objection is made, the board or the court must not make an order approving the termination and sale if it is satisfied that (1) “the transaction is not in good faith after taking into account only the following factors”: (a) the sale price; (b) the method of distributing the sale proceeds; and (c) the relationship between the purchaser and any owner, or (2) “the sale and purchase agreement would require any subsidiary proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the lots and the common property in the strata title plan.”
>
> [Footnotes omitted.]

[114] The opposing respondents maintain that council breached its express and implied duties in the following ways:

- a meeting for August 22, 2016 had been arranged by Mr. Cavin and hosted by Ms. Cavey to introduce to the owners, Mr. Gioventu, executive director of CHOA. A notice was posted, but Council failed to cancel a council meeting that was scheduled for the same date;

- All of the actions of Mr. Otto and other members of council, the lawyers, and consultants were biased towards the yes side, there was a push to collect proxies for the votes in favour of the yes side, and this was intimidating, intrusive, and disrespectful of the no side’s right to privacy, and to his or her right to vote no;

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- Despite all of the information meetings and e-mails, all of the relevant documents were not provided to owners;
- At the first SGM meeting, Ms. Bradbury was identified as a no voter, but she could not respond to comments because “the vote was a secret vote”;
- Mr. Otto and Soriah Kanji, a realtor, have been the most aggressive persons on the yes side as they stand to gain the most from the sale because of the size and location of their respective units;
- Council failed to present information in a balanced way to create the impression that owners would face burdensome repair costs if the building was not sold;
- In deciding to sell, council failed to take into account repairs which had already been completed;
- Council failed to present any information to owners about the possibility of borrowing money to fund repair expenses and amortizing the expense over time.

[115] In response to these allegations, Mr. Otto states:

- The strata council meeting of August 22, 2016 was scheduled at a project meeting on August 4, 2016. At the time that August 22, 2016 was chosen, council did not know that arrangements had been made to have Mr. Gioventu attend the same evening. He, Mr. Otto, only became aware of that fact on August 10, 2016 when he saw a poster put up in The Hampstead announcing the meeting with Mr. Gioventu. By that time, it was not practical to cancel the council meeting because of meeting arrangements that had been made with others, including the property manager, and the proposed project managers;

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- On August 16, 2016 Ms. Bradbury e-mailed Mr. Otto asking a list of eight detailed questions and concerns relating to the process, including why the August 22 council meeting was scheduled at the same time as the proposed meeting with Mr. Gioventu; and Mr. Otto replied to all of her questions and concerns appropriately;

- A few minutes prior to the meeting that was scheduled with Mr. Gioventu, Mr. Otto made a point of meeting with him, introducing himself to Mr. Gioventu, and thanking him for coming to speak to the owners;

- All of the documents that any of the owners requested relating to the proposed winding-up and sale were provided, except for the two competing (and lower) bids. Before council members met with Cushman to review the three bids, each council member signed a confidentiality agreement, and all of the copies of the bid offers were returned by council members to Cushman at the end of the meeting, so that the information about the two lower bids was not inadvertently disclosed and jeopardize Townline's bid;

- Mr. Wilson at every meeting always told the owners present that they could vote no at any time a resolution was considered, including no to the wind-up resolution. Mr. Wilson said at these meetings that even if an owner who had previously voted yes, for example, to retaining Cushman, that did not preclude the owner from ultimately voting no to the wind-up and sale resolution; and

- When Mr. Wilson chaired the meetings, he endeavoured to allow anyone who wished to speak to do so and to maintain a civil and respectful discourse amongst the owners.

The process was flawed

[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.

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[117] A liquidator is an officer of the court, and the owners are best protected by placing the marketing and sale of The Hampstead in the hands of a liquidator, and he is the one that "drives the bus on disposing of the lands." If an owner or owners are not satisfied with what the liquidator is doing, or with the sale price, there are other provisions in the *SPA*, outside of the winding-up process, that the owners can engage in order to obtain court oversight.

[118] The petitioners reply that if the opposing respondents' interpretation of the winding-up provisions of the *SPA* is correct, that would not only considerably lengthen the process, it would bifurcate the process. Under s. 278.1, the court's consideration would be limited to consideration of the qualifications of the liquidator and perhaps an appraisal of the property. In making its determination under s. 278.1(5), the court would not have before it, anything relating to the marketing of the property, offers that were made, or any offer that the majority of owners want to accept, or what each owner would receive from the proceeds of a proposed sale.

[119] The petitioners also point out that that the strata corporation has *not* sold The Hampstead lands. The PSA is subject to express conditions precedent, including an order of the court confirming the wind-up resolution which includes in the interest schedule, each owner's share of the proceeds of distribution. The petitioners also point out a practical difficulty with the opposing respondents' interpretation of Division 2. If the liquidator is appointed by resolution, but is unable to find a suitable purchaser, then since the strata plan has already been cancelled and surrendered to

the liquidator under s. 277, all of the owners must undergo an expensive and time-consuming restratification process.

[120] The petitioners rely on a British Columbia website publication on *Termination (Winding Up) of Strata Corporations*: *https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/termination*, which deals with the process and reads in part:

> ***Exploring Termination***
>
> Often a termination process starts when a developer approaches a strata corporation wishing to buy all the strata lots for redevelopment. Or a strata corporation may be interested in winding up and selling for redevelopment because of excessive repair and maintenance costs.
>
> Open and transparent communication with owners is essential. Information meetings should be held with owners from the very beginning to discuss options and collectively learn more about termination (winding up) including disbursement of funds to owners (if selling to a developer), costs and fees.
>
> Owners will also want to understand how funds from selling would be disbursed. Disbursement to owners will be affected by when the strata plan was filed: before August 1974, unit entitlement; August 1974 to 2000, interest upon destruction; after 2000, relative assessed values.
>
> If the majority of owners are interested in termination, usually a resolution is adopted to enable the strata council to move the process forward and hire legal counsel. Given the costs of the legal review and governance implications, the strata council should only proceed once the owners have formally given direction. The strata corporation is strongly advised to obtain independent legal and professional advice.
>
> The strata council may also hire a real estate broker to market the property or negotiate an offer from a developer. When hiring a broker, the strata corporation's legal counsel should closely review: the terms and conditions of the agency agreement; the commission rates; and whether any type of limited dual agency (i.e. representing both buyer and seller) is permitted.
>
> There is no set procedure but once an eligible offer has been received, a resolution to terminate can be drafted. The winding up resolution should be drafted by the strata's legal counsel and will usually be a detailed multi-paged document. The termination resolution will authorize termination of the strata plan, authorize the strata corporation to apply to the Supreme Court for termination orders and a vesting order authorizing the cancellations of the strata plan and winding up of the strata corporation; approve expenditures (funding for the lawyer, liquidator, liquidator's legal representation, fees and commissions); and may also address miscellaneous matters like move out timelines or rent-free periods.
>
> [Underlining added.]

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[121] Ms. Bradbury sent an April 30, 2016 e-mail to Mr. Otto enclosing CHOA Bulletin: 300-674, Liquidating a strata – Part 2, by Tony Gioventu: *http://www.choa.bc.ca/wp-content/uploads/pdf/300/300-674%2025022016%20Liquidating%20a%20Strata%20Part%202.pdf*. In the Bulletin, Mr. Gioventu provides similar advice:

> Owners are entitled to the best price and the best terms for their property before they consider selling. To reach this objective, a logical sequence is necessary for the strata corporation to follow. Your success will require many information meetings and constant communication with your owners to prepare them for the vote and the emotional liquidation of their community. To begin, the strata owners will vote by at least a majority vote to give council authority and direction to start the process of investigating the option of selling the strata, and to retain an independent lawyer who acts solely for the strata throughout the process. The council will invite brokers to provide them with proposals on the marketing of the property with negotiable fees generally from 1-2% of the total sale. Once council have chosen a broker and completed a legal review of the contract, the broker proceeds with marketing the property. Developers and land speculators will be invited to assess the property, and submit offers. The offers may take into consider location, expanded development opportunity, transit and community access, neighbouring developments and amenities and the overall potential for the site. This phase usually takes 3-6 months. When the broker finalizes a short list of 3-5 offers, the strata council and their lawyer meet, consider the offers and perhaps counter offer or consider terms and conditions of an offer, subject to the approval of the owners at a general meeting. Once the final offer is approved in principle the complicated work begins all in preparation of a general meeting of the owners to vote on the proposal. Around months 6-12 the final negotiation of the purchase conditions and price are completed and the strata's lawyer will prepare the 80% vote resolution that authorizes the liquidation, authorizes the court application to ratify the decision, and to appoint the liquidator who will be responsible for the receipt of the money from the developer, the cancellation of each of your titles into one parcel of land, and the payout to each owner, their share of the proceeds after any charges on their property. The resolution that the owners will vote on and the sequencing of the events is the most critical part of the transaction. You can easily expect a resolution that is 5- 20 pages in length because the resolution must include all of the terms and conditions of the contracts, agreements, court applications, liquidation procedures and transfer of funds. One quirk of the liquidation process is owners who require their proceeds to make another purchase will have to wait until the job of the liquidator is complete before they can shop for a new home. To provide time for owners to move and relocate, the strata negotiates 60-120 days of occupancy after the completion of the liquidation, as part of the contract. If all goes well, plan on 12-18 months.
>
> [Underlining added.]

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[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.

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[123] Indeed, Ms. Bradbury recognizes that it is council – and not the liquidator – who obtains a listing agreement before considering any resolution for wind-up and sale. In her August 22, 2016 e-mail to Mr. Otto, she asked him to address her list of questions and concerns at the August 22, 2016 meeting, which include the following:

> Gloria Bradbury Suite #103
>
> Request to raise these issues at Council Meeting Aug. 22, 2016
>
> 1. It is my understanding after reviewing this issue that Winding Up the Strata should follow an actual "offer to purchase", and therefore would only be considered after we have listed the property and are considering the acceptance of an offer. The reasons are as follows:
>
> > a) we are vulnerable to being without any proper strata structure to manage our affairs if dissolution is carried out too early; as any potential sale could always take a much longer time than anticipated.
> >
> > b) the potential exists for us to be pressured by an interested buyer to act hastily because we would have already dissolved our corporation and would be without a Strata Council to act on behalf of all owners
> >
> > c) early dissolution shifts the bargaining power from owners to real estate agents who have their own agenda to effect an early sale
>
> 2. What if in fact there would be no agreement to accept an offer and the property is not sold? Where does that leave the owners since we would have already dissolved the Strata structure? Quote: (Source BC Law Institute: February 2015 Report on Terminating a Strata p.19) Dissolution is the 'final act' for a corporation, the procedure by which its existence is brought to an end. Or as one commentator has put it 'dissolution of a corporation may be equated to the death of a corporation'
>
> 3. Would it not make more sense to have already an agreed upon and accepted offer before Winding Up the Strata? I think it gives us a much stronger position to withhold Winding Up until we have an agreed upon sale price.

> 4. There is significant merit in matching the Winding Up of the Strata with a precise time when we are all sure that an offer that is presented will be accepted, I do not see any benefit in taking this action sooner than that.
>
> 5. At the time of Winding Up the Strata each individual owner should know exactly how much will be realized for their suite when our property is sold. That cannot be determined until an actual offer is on the table for acceptance. Therefore it is reasonable to time the Winding Up with an offer that would determine exactly how much each owner would receive on a sale. We would know how much we were getting and could then authorize Council to Wind Up the Strata so that the property could be sold for the agreed upon price.

[124] Ms. Bradbury is correct. It is council – and not the liquidator – who obtains a price for the property before there is a resolution for wind-up and sale, and an application to court for an order confirming the winding-up resolution. I do not find the process to have been flawed.

VII. ANALYSIS AND CONCLUSION

[125] The legislature in adopting the recommendations in the BCLI report 2015 recognized that increasing repair and maintenance costs for aging strata buildings, increasing land values, and municipal policies for increasing densification, encourages some owners to gain the financial benefit of redevelopment. The legislature recognized the difficulty in obtaining unanimous agreement, and amended the *SPA* to require 80% of the eligible voters to pass a resolution for the voluntary winding-up and termination of the strata corporation.

[126] The opposing respondents refer to events that they claim intimidated them, or invaded their privacy (eg. owners making phone calls to others, and solicitation of proxies), and right to oppose the sale. However, those tensions may naturally develop in a democratic system where people are free to encourage or persuade others to their point of view.

[127] Ms. Cavey may have felt intimidated to speak out when Ms. Bradbury’s June 30, 2016 e-mail was read out, but there is no suggestion she was intimidated by any one. Those who hold minority views may feel intimidated or fearful to speak up, but that does not necessarily mean that others in the majority, or the process itself, was significantly unfair. There is nothing on all of the evidence that suggests to me that

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the opposing respondents were coerced to vote yes (or no) by force, threats, or intimidation.

[128] The factors that a court must take in determining whether to make an order confirming the wind-up resolution, or an order appointing a liquidator to wind up the strata corporation are set out in s. 278.1(5) and s. 284(3). The factors are the same, and in this case are:

> (a) the best interests of the owners, and
>
> (b) the probability and extend, if the winding-up resolution is confirmed or not confirmed, of
>
> > (i) significant unfairness to one or more
> >
> > > (A) owners,
> > >
> > > ... and
> >
> > (ii) significant confusion and uncertainty in the affairs of the strata corporation or of the owners.

[129] In applying those factors, I do not agree that property rights as a home should be given greater emphasis in the face of 80% or more of the owners who want to take advantage of the increased profit to be made as a result of rezoning and redevelopment, particularly when the preponderance of the evidence is that the owners who want to remain living in the community can do so.

[130] The amendments to the *SPA* as a result of Bill 40, recognize that strata law draws from real property law and from corporate and contract law:

> People have long acknowledged that strata legislation "reflects the combination of several legal concepts and relies on, and to a degree incorporates by reference, principles drawn from several different areas of law." Within a single legislative framework, strata laws incorporate rules drawn from real property law, corporate law, and contract law. The values that inform these rules can be in tension. On the one hand, property law tends to value individual autonomy, permanence, and stability. On the other, corporate and contract law value majority rule decision making, flexibility, and adaptation to changing circumstances. Tensions between these values can be especially acute in high stakes termination disputes. Striking the right balance in the legislation poses an ongoing challenge for policymakers.
>
> BCLI 2015 report, pp. 10-11

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[131] The winding-up provisions of the *SPA* balances the various legal rights, so that property rights are not to be given priority over other legal rights.

[132] The opposing respondents argue that the court should consider that reasonable expectations of the owners who purchased their units prior to Bill 40 could live in their units as long as they wanted, or as long as they were able to live there. However, I agree with the petitioners that the *SPA* does not provide that the 80% provisions only apply to strata corporations that come into existence after the provisions came into force. The *SPA* has always provided for a wind-up and termination of a strata comprised of at least 10 strata lots, and where there is a 95% vote in favour of termination, to have the court declare the vote to be a unanimous vote.

[133] In my view, the question should be: whether examined objectively, does all of the evidence support the assertion that owners who purchased prior to Bill 40, reasonably expected to live in their units as long as they wanted, or for the rest of their lives. I say the answer to that question must be no. Reasonable expectations are not static, but change over time with all of the surrounding circumstances. Ms. Bradbury has lived in her unit for 26 years. Circumstances have changed over those years. Her reasonable expectation, and the reasonable expectation of the other owners, must be – to paraphrase from Ms. Bradbury's April 30, 2016 e-mail – that The Hampstead is "a hugely valuable commodity", "located in the best possible location on transit, near amenities, with the expressed interest by the City to redevelop the site".

[134] It is not for the court to determine on this application the wisdom of the City's decision on social housing, densification, or the re-zoning or the City's West End Community Plan allowing for redevelopment of The Hampstead. Those matters are in the purview of the City. Thus, the impact of the proposed and existing redevelopment in and to the surrounding community, the loss of community heritage, the importance of preserving the City's history, and the environmental impact of what is considered to be "premature redevelopment or demolition of the building" are not

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factors that ought to be considered by the court in considering “the best interests of the owners” under s. 278.1 or s. 284(3)(a). If I am wrong, they are not to be given undue emphasis in the face of more than 80% who want to sell the property to a developer.

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[135] I have also indicated that I do not accept the position of some of the dissenting owners that they will be displaced from their community, or that they will be unable to find similar condominium units and remain in the community, if the order confirming the wind-up and termination were made. The whole of the evidence satisfies me that with the proceeds from the proposed sale, all of the owners should be able to acquire comparable units in the West End, and on that point, a wind-up and sale is not significantly unfair to them.

[136] Ms. Bradbury and Ms. Cavey suggest that they were confused or troubled by the entire process, and the wording of the resolutions, but the preponderance of evidence is that the owners were informed every step of the way, the process was transparent, and all of the owners were provided with any information they sought, answers to any questions they had, and provided with any document they requested, except for copies of the two other competing bids.

[137] The suggestion that council tried to create the impression that the owners would face burdensome repair costs if the owners did not sell, or that council failed to take into account the repairs that had already been completed, or failed to consider borrowing money to fund repairs is neither in my view, indicative that the proposed sale is not in the best interests of the owners, or that of significant unfairness to the dissenting owners. Rather, it is reflective of the differing view points that will occur when there are differences of opinion between those who want to sell and those who do not.

[138] The opposing respondents rely on *Ghee* for contending that the duties that are said to bear upon the SC in Singapore are duties that should be imposed on a strata council under the *SPA*, and that council breached those duties to the owners. However, the evidence fails to establish that to be the case. In *Ghee*, the dissenting

owners successfully demonstrated the transaction was not in good faith, and tendered expert valuation reports to show that the property had been sold at too low a price. There is no suggestion that the professionals hired by The Hampstead council were incompetent, or that Townline's price is too low or not the best price.

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[139] While I understand the reasons why each of the opposing respondents do not want to move, I conclude that it would be significantly unfair to the majority of the owners if the orders sought by the petition were not granted; more than 80% of the owners would have their wishes thwarted by a small minority. Each owner of the supermajority would suffer a significant financial loss: the opportunity to receive roughly two and a half times what they would receive if they were to sell their unit individually, and the opportunity to remain in the community.

[140] The evidence does not convince me that a winding-up resolution would or is significantly unfair to one or more of the owners. "Significant unfairness" in s. 278.1(5)(b)(i) and s. 284(3)(b)(i) encompasses oppressive conduct and unfairly prejudicial conduct or resolutions. It is conduct or consequences that are "burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith." The modifying term "significant" indicates that the "unfairness" must be oppressive or transcend beyond mere prejudice or trifling unfairness. It must be "unfairness" that is "of great importance or consequence.": *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, paras. 25-28. The word "significant" imposes a more stringent threshold than simply "unfairness": *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 41.

[141] The opposing respondents may feel stressed by having to move, and that being forced to move is not fair to them. I cannot find that an order confirming the winding-up resolution is significantly unfair to any of them.

[142] While the opposing respondents contend that having to move from their home will cause "significant confusion and uncertainty" the *SPA* clearly contemplates that owners on a winding up of the strata corporation will have to move. I do not agree that having to move as a result of the termination of a strata corporation results in

the kind of "significant confusion and uncertainty" in the affairs of the owners, within the meaning of s. 278.1(5)(b)(ii) or s. 284(3)(b)(ii).

VIII. ORDERS

[143] I agree with the arguments of the petitioners, and the petitioners are entitled to the orders set out in the petition, as amended.

[144] The petitioners seek the costs of the petition payable on a solicitor and client basis from the proceeds of the sale of The Hampstead. The petitioners have been successful, and if the petitioners and the opposing respondents cannot agree on costs, they may speak to the matter.

"Loo J."

The Honourable Madam Justice Loo

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