COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Dubas v. The Owners of Strata Plan VR. 92,* 2019 BCCA 196

Date: 20190605
Docket: CA45286

Between:

Jonas Gary Dubas

Appellant
(Petitioner)

And

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

Respondents
(Respondents)

Before: The Honourable Mr. Justice Goepel
The Honourable Mr. Justice Savage
The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia, dated May 11, 2018 (*Buckerfield v. The Owners of Strata Plan VR. 92*, 2018 BCSC 839, Vancouver Docket No. S184934).

Counsel for the Appellant:	J.G. Dubas
Counsel for the Respondent:	M. Jhaj
Place and Date of Hearing:	Vancouver, British Columbia May 16, 2019
Place and Date of Judgment:	Vancouver, British Columbia June 5, 2019

Written Reasons by:
The Honourable Mr. Justice Abrioux

Concurred in by:
The Honourable Mr. Justice Goepel
The Honourable Mr. Justice Savage

Summary:

The appellant strata owner sought a declaration that the listing of a strata complex for sale, as part of the strata winding-up process, requires supermajority approval of the strata owners. The chambers judge dismissed the appellant's petition, reasoning that listing a complex only requires simple majority approval under the Strata Property Act. The appellant appealed from the order dismissing his petition. Held: Appeal dismissed. The appellant did not identify any errors in the judge's interpretation of the Act, in that the Act provides other protections for the interests of dissenting owners.

Reasons for Judgment of the Honourable Mr. Justice Abrioux:

I. Introduction

[1] This is an appeal from an order of Justice Brundrett, pronounced May 11, 2018, dismissing the appellant's petition for a declaration that the respondent strata corporation must obtain supermajority approval of the owners before listing a strata complex (comprising both the strata units and the common property) for sale. In reasons for judgment indexed as *Buckerfield v. The Owners of Strata Plan VR. 92*, 2018 BCSC 839, the chambers judge concluded that only a simple majority was required.

[2] The appeal raises the issue as to the requisite majority required under the *Strata Property Act*, S.B.C. 1998, c. 43 (the "*Act*"), to approve a resolution by a strata corporation to list a strata complex for sale.

II. Background

[3] The strata complex at issue is a three-story building located near Granville Street in Vancouver, British Columbia. It contains 41 strata units. The appeal names as respondents both the owners of the strata properties and the members of the strata council. The appellant, Mr. Dubas, is the owner of one of the 41 strata units and is the representative of the dissenting owners.

[4] In early 2017, the strata council began to receive requests from realtors about the possibility of selling the building to developers. The council held a

general meeting in May of that year, at which it informed the owners of these requests and gave a presentation on the strata winding-up process.

[5] In July 2017, the strata council circulated an informal ballot to gauge the owners' interest in listing the complex for sale. Twenty-four owners were in favour of listing, 14 were opposed and three did not respond. Soon afterward, the council informed the owners that it intended to proceed and engage the services of a realtor.

[6] On April 20, 2018, Mr. Dubas filed a petition under the *Act* on behalf of himself and 12 other minority owners who were all opposed to the potential sale. Among other things, the petitioners sought a declaration that the decision to list the complex for sale attracts a supermajority voting threshold of either 75% or 80% of the owners.

Chambers Decision

[7] The chambers judge dismissed the petition as premature. In his view, although Division 2 of Part 16 of the *Act*, which concerns the voluntary winding up of a strata corporation with a liquidator, requires supermajority owner approval to finalize the sale of a strata complex, no supermajority requirement attaches to steps that are merely preliminary to a proposed sale.

[8] First, the judge noted that the *Act* does not expressly impose a supermajority requirement upon the listing of a strata complex for sale. Second, he found that such a requirement would be unnecessary, in that ss. 277 and 278.1 of the *Act*, which require that any proposed winding up be approved by both the court and a supermajority of the owners, together "provide adequate protection for the rights of minority or opposing owners in circumstances such as this." Finally, he reasoned that "the additional front-end requirement" sought by the petitioners would be "overly interventionist" and "cumbersome," placing it at odds with recent amendments to the *Act*—relating to the use of a liquidator—that were intended to facilitate the voluntary winding-up process.

[9] The judge referred favourably to certain *obiter* comments made by the Supreme Court of British Columbia in *The Owners, Strata Plan VR2122 v. Wake*, 2017 BCSC 2386. In July 2018, after the chambers judge had already released his reasons, *Wake* was overturned in part by this Court in *The Owners, Strata Plan VR2122 v. Bradbury*, 2018 BCCA 280 ("*Bradbury*").

Injunction Application

[10] Mr. Dubas filed a notice of appeal on May 14, 2018. He further applied for an interim injunction pending appeal that would have prevented the strata council and owners from listing the complex for sale. The injunction application was heard and dismissed by Justice Fenlon on May 23, 2018, with reasons indexed at 2018 BCCA 243.

III. Issues on Appeal

[11] Mr. Dubas raises three main issues on appeal, being whether:

(a) the listing of a strata complex for sale would trigger an 80% voting threshold under Division 2 of Part 16 of the *Act*, although, at the hearing of the appeal, Mr. Dubas' position was that only 75% approval was required;

(b) the strata corporation and owners would lack the authority to list and market the complex without a liquidator in place to conduct the process; and

(c) the listing of a strata complex for sale would otherwise trigger a 3/4 voting threshold under the *Act*.

[12] For the reasons that follow, I would answer these questions in the negative and dismiss the appeal.

IV. Statutory Framework

[13] The relevant provisions in the *Act* are the following.

[14] Part 16 of the *Act* provides three procedures for cancelling a strata plan and winding up a strata corporation:

(a) voluntary winding up without a liquidator under Division 1 (ss. 272–75);

(b) voluntary winding up with a liquidator under Division 2 (ss. 276–83); or

(c) court-ordered winding up under Division 3 (ss. 284–85).

[15] This appeal engages Division 2. Section 277(1) of Division 2 provides:

> 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.

[16] This provision was added in July 2016. Previously, a voluntary winding up under Division 2 required the unanimous approval of the owners: see *Bradbury* at paras. 11–15.

[17] Section 277(3) further provides:

> 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.

[18] Section 278.1 adds the additional protection that the winding-up resolution must then be confirmed by the Supreme Court of British Columbia:

> **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.
>
> …

> (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,
>
> (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.

[19] Section 282(1) provides that:

> 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.

[20] Other sections of the *Act* provide for a heightened voting threshold in certain circumstances, such as in the event of significant changes to the use or appearance of common property (s. 71), disposal of common property (s. 79) and acquisitions or disposals of personal property valued at over certain set amounts (s. 82).

[21] Finally, section 50(1) provides:

> At an annual or special general meeting, matters are decided by majority vote unless a different voting threshold is required or permitted by the *Act* or the regulations.

V. Standard of Review

[22] Mr. Dubas challenges the chambers judge's interpretation of the *Act*. Since the proper interpretation of a statute is a question of law, the standard of review is correctness: *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.,* 2016 BCCA 370 at para. 13.

VI. Discussion

[23] As noted by the chambers judge, the *Act* does not expressly impose any supermajority requirements upon a resolution to list a strata complex for sale. Nor, in my view, does the *Act* imply any such requirement.

[24] Sections 277 and 278.1 of Division 2 of Part 16 both afford protections to the interests of dissenting owners in the event of a voluntary winding up with a liquidator. Given these protections, I do not accept that the listing of a strata complex for sale, at least where the listing agreement remains conditional upon an approved winding-up resolution, could materially infringe these interests. If the listing eventually leads to an actual proposal for winding up—an outcome which, I note, need not occur—then the resolution would still need to receive 80% approval from the strata owners (s. 277). If such approval were forthcoming, then a court would still need to approve the resolution, having regard to the interests of the owners as well as the risk of significant unfairness, confusion and uncertainty (s. 278.1).

[25] Mr. Dubas, for his part, alleges several negative consequences that could flow from the listing of the strata complex for sale but which would not be addressed by s. 277 or s. 278.1. He contends, citing *Chen v. The Owners Strata Plan VR1856*, 2016 BCSC 1946, that listing the complex would diminish the value of the strata units and make them hard to sell. He further says that it would require the owners to be available for purchasing inspections. Finally, he submits that listing the complex for sale, whether or not a winding-up resolution were subsequently approved, would entail significant financial costs and could run afoul of the budget-related provisions of the *Act*.

[26] Mr. Dubas has provided no evidence that listing the complex for sale would negatively impact the value of the strata units or entail inspections for which strata owners must be present. In fact, the draft listing agreement is to the contrary. Accordingly, I would reject those aspects of his argument.

[27] As for the budgetary concerns, I would find that they raise issues quite separate from the question of whether the listing of the strata complex for sale requires more than majority approval. Even if the listing of a complex for sale were to trigger, as a matter of implementation, certain supermajority voting provisions under the strata finance sections of the *Act*, it would hardly follow, in my view, that the resolution to list the complex would also be subject to those same voting requirements.

[28] Nor do I consider that the *Act* requires the listing of a strata complex for sale to be conducted by a liquidator. In *Bradbury*, Justice Fenlon for this Court rejected the proposition that the authority for overseeing marketing and negotiations for the sale of a strata complex under Division 2 of Part 16 lies solely with the liquidator:

> [35] … Although the land and property of the strata must be transferred to the liquidator for the purpose of selling it, that does not require the liquidator to control the marketing of the property in order to protect the interests of those opposed to the sale. The liquidator's role is described exactly as it was when the Act required unanimity of the owners. This suggests that, as before, the liquidator's primary responsibility is to act as a conduit for the transfer of the lands and as a court-appointed and approved person responsible for making sure that creditors and charge holders are paid out and that each owner receives the share of the net sale proceeds he or she is entitled to under the interest schedule.
>
> …
>
> [38] In addition, there is no reason to assume that a liquidator would bring any particular expertise to the marketing of the property. A liquidator, like the owners themselves, would likely engage the services of professional realtors in order to maximize the exposure of the property and obtain the best bid.
>
> [39] Finally, the fundamental premise of the appellants' interpretation is that only the liquidator has the capacity to enter into a binding contract of sale, and then only after the property is vested in him or her by registration of the court order with the Registrar of Land Titles. <u>While it is correct that the consolidation and vesting of all of the property in the liquidator is a necessary step in the transfer of legal title, in my view that does not mean the strata council has no legal capacity to enter into a contract which is subject to agreement of the owners. Under s. 2(2) of the Act, a strata corporation has the power and capacity of a natural person of full capacity and, accordingly, may enter into contracts. Section 38(a) provides the strata corporation with authority, in addition to its capacities under any other enactment, to enter into contracts in respect of its powers and duties under the Act.</u>
>
> [Emphasis added; original emphasis omitted.]

[29] The strata owners in the present case have yet to formally commence the Division 2 winding-up process. Indeed, as recognized by the chambers judge, a vote under s. 277(1) "may not be necessary at all if the realtor is unable to obtain a favourable offer on the building." It may also be possible for the owners to wind up the strata corporation and cancel the strata plan under Division 1—that is, without a liquidator—in which case the listing and marketing of the strata complex would need to be conducted by the owners.

[30] In any event, I conclude that Division 2 of Part 16 neither imposes an 80% voting threshold upon the listing of a strata complex for sale nor limits the authority to list or market such property to only the liquidator.

[31] Mr. Dubas raises a number of alternative arguments. He says, for instance, that the listing of a strata complex for sale would trigger s. 71 of the *Act*, which concerns significant changes in the use or appearance of common property:

> **Change in use of common property**
>
> **71** Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless
>
> (a) the change is approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or
>
> (b) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.

[32] He also argues that the listing of a strata complex for sale counts as a "disposition," in which case it would attract supermajority voting requirements under s. 79:

> **Disposal of land held in strata corporation's name**
>
> **79** To sell, lease, mortgage, grant an easement over, grant a restrictive covenant affecting or otherwise dispose of land that is a common asset, the strata corporation must proceed as follows:
>
> (a) a resolution approving the disposition must be passed by a 3/4 vote at an annual or special general meeting;
>
> (b) any document needed to effect the disposition must be executed by the strata corporation and delivered to the land title office accompanied by a Certificate of Strata

> Corporation in the prescribed form, stating that the resolution referred to in paragraph (a) has been passed and that the document conforms to the resolution.

[33] In my view, neither of these arguments has merit. I note, firstly, that the Legislature could have expressly required a supermajority in relation to the listing of a strata complex for sale, whether under s. 79 or elsewhere, but chose not to do so. Furthermore, the mere act of listing a strata complex for sale would not materially alter the legal or physical characteristics of its component units or common property. As Justice Fenlon explained in relation to Mr. Dubas' unsuccessful injunction application:

> [7] I accept that the vote and potential listing of the property for sale is distressing for those who view the property as their home, and have lived there for many years, some of whom are elderly and would much prefer to stay where they are. … However, it is noteworthy that this is not a matter of the status of the property itself changing in any legal sense, nor is it a matter of those owners' units being altered or changed in some irreparable way. Their legal position in terms of their ownership of their units and their control over their property is not irreparably altered by the listing of the property.
>
> [Emphasis added.]

[34] On the other hand, the solicitation of offers pursuant to a listing would place the owners in a better position to judge the benefits of any winding up that might later be proposed. It would thus be both counterproductive and "overly interventionist," to borrow a phrase from the chambers judge, to impose a heightened voting requirement at this preliminary stage of the winding-up process.

VII: Conclusion

[35] The appellant has not established any error in the judge's interpretation of the *Act*, according to which only a simple majority of owners, as per s. 50(1), is required to approve the listing of a strata complex for sale.

[36] Accordingly, I would dismiss the appeal.

[37] That being the case, there is no need for the Court to consider the appellant's renewed application for an injunction or to adduce new evidence. The fact that the strata corporation, for practical considerations, is now apparently

prepared to list the strata complex for sale if a resolution to do so receives 75% owner approval does not assist in the determination of the legal issue raised by the proper interpretation of the *Act*.

[38] As for costs, Mr. Dubas submits that in the event the appeal is dismissed, either there should be no order as to costs or else the strata corporation should have to pay costs on the basis that the issues raised are of importance to both the strata corporation and the general public.

[39] Costs will typically go to the successful party on appeal, barring some principled basis for ordering otherwise: *Monster Energy Company v. Craig*, 2016 BCCA 484 at para. 8. In *Luis v. Marchiori*, 2018 BCCA 364, the Court discussed its discretion to depart from this general rule in the context of public interest litigation:

> [7] Section 23 of the *Court of Appeal Act*, R.S.B.C. 1996, c. 77, sets out the general rule: unless the court otherwise orders, the successful party is entitled to costs of the appeal. The court has broad discretion to depart from that rule, but it is unusual for the court to do so: *Olney v. Rainville*, 2010 BCCA 155 at para. 9. The overarching question is whether the usual rule is suitable in the circumstances of the particular case. In considering whether the court should exercise its discretion to depart from the usual rule because the public interest is served by the litigation, the court may consider the factors referred to in *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner)*, 2005 BCCA 368 at para. 8:
>
> (a) The proceeding involves issues the importance of which extends beyond the immediate interests of the parties involved.
>
> (b) The person has no personal, proprietary or pecuniary interest in the outcome of the proceeding, or, if he or she has an interest, it clearly does not justify the proceeding economically.
>
> (c) The issues have not been previously determined by a court in a proceeding against the same defendant.
>
> (d) The defendant has a clearly superior capacity to bear the costs of the proceeding.
>
> (e) The plaintiff has not engaged in vexatious, frivolous or abusive conduct.

[40] Mr. Dubas has not, in my view, established any principled basis for departing from the general rule as to costs. As was the case in *Luis*, the present

appeal involves neither constitutional issues nor issues of exceptional public or national importance. I observe also that Mr. Dubas, as one of the dissenting owners, has a personal and proprietary interest in the outcome of the appeal. Finally, the strata corporation does not, in my view, have a clearly superior capacity to bear the costs of the proceeding. In this regard, I note the budgetary concerns that Mr. Dubas himself has raised.

[41] I would, for these reasons, award costs to the respondents.

"The Honourable Mr. Justice Abrioux"

I AGREE:

"The Honourable Mr. Justice Goepel"

I AGREE:

"The Honourable Mr. Justice Savage"