

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan NWS 3401 v.  
HSBC Bank of Canada,*  
2013 BCSC 1217

Date: 20130531  
Docket: S120911  
Registry: Vancouver

Between:

**The Owners, Strata Plan NWS 3401**

Petitioner

And:

**HSBC Bank Canada**

Respondent

Before: The Honourable Madam Justice Watchuk

## **Oral Reasons for Judgment In Chambers**

Counsel for the Petitioner:

Geoffrey Dabbs

Owners appearing on their own behalf:

Ms. J. Jia  
Ms. K. Yang

Place and Date of Trial/Hearing:

Vancouver, B.C.  
May 27, 2013

Place and Date of Judgment:

Vancouver, B.C.  
May 31, 2013

**I. Introduction**

[1] This is an application by Mr. Boon Sim, the Court Appointed Administrator of the Petitioner organization, The Owners, Strata Plan NWS 3401 (the "Administrator").

[2] The Administrator seeks the following three orders granting:

1. A special levy imposed in the amount of \$40,000.00 to pay the legal expenses incurred by the Strata Corporation related to the appointment of the Administrator and other legal proceedings;
2. A special levy imposed in the amount of \$40,000.00 for the purpose of paying the remuneration and expenses of the Administrator;
3. A special levy in the amount of \$9,000.00 for the purpose of funding the preparation of a depreciation report prior to December 14, 2013 to comply with section 94 of the *Strata Property Act*, S.B.C. 1998, c. 43 (the "Act").

[3] The application was delivered to all owners on April 3, 4, or 5, 2013. Although all owners were notified, only Ms. Jia and Ms. Yang responded. Ms. Jia and Ms. Yang attended at the hearing of the application to make submissions in opposition.

[4] With regard to the three narrow orders sought (that special levies be imposed: \$40,000 to pay legal expenses, \$40,000 to pay the remuneration and expenses of the Administrator, and \$9,000 to fund a depreciation report), Ms. Jia and Ms. Yang object. They submit that the Administrator's remuneration and expenses are not in a reasonable amount; the amount sought for the depreciation report is in excess of a reasonable amount; and the legal expenses were incurred by a council which was not properly elected.

**II. Background Facts**

[5] The background facts are set out in the Notice of Application. I quote:

1. Boon Sim was appointed the Administrator in respect of the Strata Corporation pursuant to the Order of Mr. Justice Cullen

- made August 16, 2012 in these proceedings (the “Appointment Order”).
2. Pursuant to paragraph 5 of the Appointment Order, the Administrator’s initial appointment was for three months in which time the Administrator was to make a report on the steps taken, the costs incurred and whether the Administrator’s appointment should continue.
  3. The Administrator’s First Report to the Court dated November 8, 2012 (the “First Report”) was filed with the court on November 9, 2012.
  4. Pursuant to paragraph 6 of the Appointment Order, the Administrator had liberty to apply to the Court for further directions.
  5. Pursuant to the Order of Mr. Justice Burnyeat made December 12, 2012, the Administrator’s appointment was extended to June 1, 2013 (the “Extension Order”).
  6. Pursuant to paragraph 3 of the Extension Order, the Administrator was required to call an annual general meeting of the Strata Corporation on or before February 22, 2013.
  7. On January 28, 2013, the Administrator gave Notice of Call with respect to the annual general meeting of the Strata Corporation to be held on February 21, 2013 (the “AGM”).
  8. The Administrator’s Second Report to the Court dated February 15, 2013 (the “Second Report”) was filed with the court on February 18, 2013.
  9. In section 3.3.3 of the First Report the Administrator advised that the owners needed to approve a special levy to pay the outstanding legal accounts of Lesperance Mendes (the “Lawyers”).
  10. The Lawyers issued an additional account following the application leading to the Extension Order.
  11. The Administrator was able to negotiate a reduction in the legal accounts of the Lawyers. In the result, the Administrator advised in section 3.2.3 of the Second Report that the owners needed to approve a special levy of \$40,000.00 to pay the compromised legal accounts.
  12. In section 3.1 of the Second Report, the Administrator reported on the costs of his administration from October 1, 2012 to January 31, 2013.
  13. Paragraph 4 of the Appointment Order provides that the Administrator[’]s fees shall be paid by the Strata Corporation.

14. Section 174(4) of the *Strata Property Act* provides that the remuneration and expenses of the administrator must be paid by the strata corporation[.]
15. In section 3.2.4 of the Second Report, the Administrator advised that the owners needed to approve a special levy in the amount of \$40,000.00 to pay the Administrator's costs to January 31, 2013.
16. Section 94 of the *Strata Property Act* was amended to require strata corporations to obtain a depreciation report by December 14, 2013 or alternatively for the owners to waive the requirements for a depreciation report by a resolution passed by a 3A vote at an annual or special general meeting.
17. Prior to giving the Notice to Call the Administrator obtained an estimate for preparation of a depreciation report for the Strata Corporation in the amount of \$9,000.00.
18. In section 3.2.8 of the Second Report the Administrator advised that the Strata Corporation should obtain a depreciation report in order to help identify financial requirements and to help prioritize capital projects that need to be completed.
19. On February 21, 2013, the Strata Corporation held the AGM. The owners at the AGM failed to approve special resolutions by the requisite 3A vote in respect of:
  - (a) A special levy of \$40,000.00 to pay the compromised legal accounts of the Lawyers. The votes were 15 in favour, 13 opposed with one abstention, representing a 51.72% majority.
  - (b) A special levy of \$40,000.00 to pay the services and disbursements of the Administrator. The votes were 18 in favour, 11 opposed with no abstentions, representing a 62.07% majority.
  - (c) A special levy of \$9,000.00 for preparation of a depreciation report. The votes were 16 in favour, 12 opposed with one abstention, representing a 55.17% majority.
  - (d) Waiver of the preparation of a depreciation report. The votes were 21 in favour, 8 opposed with no abstentions, representing a 72.41% majority.

### **III. Discussion**

[6] The Administrator submits that authority for the orders sought is found in section 174 of the *Strata Property Act* which provides in subsection 7:

Unless the court otherwise orders, if, under this Act, a strata corporation must, before exercising a power or performing a duty, obtain approval by a resolution passed by a majority vote, a 3/4 vote or a unanimous vote, an administrator appointed under this section must not exercise that power or perform that duty unless that approval has been obtained.

[Underlining added]

[7] Votes were held with regard to the three items which are the subject of this application, but each vote, although passed by a majority, failed to receive a 75% majority.

[8] Ms. Jia advised the Court that she and Ms. Yang represent 14 other owners. Ms. Jia was heard by the Court without objection by the Administrator. However, as no other owners responded to the notices delivered to them, I declined to hear Ms. Jia as a representative of a group of owners.

[9] The objections raised by Ms. Jia arise generally in the context of a complex situation at the strata council rather than with this specific application. With regard to legal fees, Ms. Jia submits that the lawsuit was started by the council which was improperly elected as a result of fraudulent proxy votes. She also states that the lawsuit was commenced without her knowledge.

[10] With regard to the Administrator's remuneration and expenses, Ms. Jia takes issue with the decision by the Administrator to repair the roof. She says that the fees incurred in this regard were not reasonable, and that by removing the trees which were removed in the course of repairing the roof, the Administrator caused damage and property loss to the owners. She also states that the decision was taken at a meeting which did not in advance provide the proper two weeks' notice. She also has other complaints regarding the Administrator.

[11] With regard to the depreciation reports required by the Act, Ms. Jia says that a fee of \$2,500 to \$5,000 is a reasonable price. She is attempting to find a person who would prepare a report at that more reasonable price and says that they still have a half year to do so within the time stated for compliance.

[12] Section 174(7) of the *Act* provides that the Court may override the requirement that the Administrator have a  $\frac{3}{4}$  vote. The Administrator seeks that the Court exercise this power and order that there be a special levy imposed for each of the three items - legal fees, the administrator's remuneration and expenses, and the depreciation report.

[13] In the case of *Clarke v. The Owners, Strata Plan VIS770*, 2009 BCSC 1415, [*Clarke*], Mr. Justice Macaulay discussed issues including the application by the administrator for a special levy to fund expenses in a similar situation. At paras. 10, 20, and 21 he states:

[10] The effect of these decisions is that an administrator must first seek the approval of the strata lot owners whenever the strata corporation could not lawfully act without the authority of a resolution. This prevents the administrator simply imposing a special levy on the individual owners because the strata corporation would not have such a power either.

[...]

[20] It also follows that the power of the court to appoint an administrator under s. 174, to be effective, must include the power to order a special levy to pay the expenses associated with the appointment if the owners fail to approve the required funding. Section 174(4) states that “[t]he remuneration and expenses of the administrator must be paid by the strata corporation.” [Emphasis added.] Since this a duty of the strata corporation, s. 165 may be triggered if required.

[21] The conclusions in the cases discussed above are sensible. There would be little point in appointing an administrator to deal with a dysfunctional building only to have the administrator paralyzed by the owners’ inability to agree on important issues. The *Act* provides for a democratic process, but, when it fails, protection for the owners lies in the two-step process that is envisaged. First, the administrator must seek a  $\frac{3}{4}$  majority whenever a special resolution is required. If, however, the special resolution fails, the second step is for the administrator to apply to the court under [then] s. 165, or otherwise, for orders or directions to ensure that the strata corporation addresses all issues in respect of which it has a duty.

[14] With regard to the Administrator's remuneration and expenses, the appointment order of Mr. Justice Cullen provides that the Administrator's fees shall be paid by the corporation. Section 174(4) of the *Act* provides that remuneration and expenses of the Administrator must be paid by the strata corporation.

[15] With regard to legal fees, a substantial portion relates to these proceedings by the strata corporation which led to the appointment of the Administrator and the extension of that appointment.

[16] The strata corporation has a duty and an obligation to attend to these bills.

[17] A depreciation report is a new requirement pursuant to section 94(2)(a)(i) of the *Act*. A depreciation report must be obtained by December 14, 2013 or it must be waived by the strata corporation by a resolution passed by a  $\frac{3}{4}$  vote. A majority of the owners attending the meeting approved the special levy for the report but there was not a  $\frac{3}{4}$  majority. Similarly, a majority approved a resolution waiving the requirement for a depreciation report but it was not a  $\frac{3}{4}$  majority. Since the requirement for the report has not been waived, and since this is a strata corporation which existed on December 14, 2011, a depreciation report must be obtained by December 14, 2013 in order to comply with section 94 of the *Act*.

[18] Finally, the Administrator submits that the orders sought which would impose the special levies do not affect the ability of the council to determine how best to deal with the three items. It remains within the council's decision-making power to pay or tax the lawyers' account; to pay and/or negotiate the Administrator's remuneration and expenses; and to retain an expert to prepare the depreciation report for any fee that is negotiated by the council. The Administrator's appointment ceases today, May 31, 2013, so it will not be the Administrator but the council who makes any decision with regard to expenditure of these funds once raised by these special levies.

[19] I appreciate that Ms. Jia and Ms. Yang raise issues with regard to events which have unfolded in an unhappy way. They come to court with sincere concerns. However, those objections are not relevant to the issue before the Court which is a narrow issue within limited jurisdiction.

[20] As set out in the *Clarke* case, the Administrator must first seek a  $\frac{3}{4}$  majority but if that fails, he may apply to the court under s. 174 of the *Act* for an order to

ensure that the strata corporation addresses all issues in respect of which it has a duty. The Administrator, Mr. Sim, has followed that process.

[21] The Application is granted. The three special levies are imposed.

[22] In granting the orders sought, the Court is not ordering that the accounts be paid as rendered or ordering the price for which a depreciation report should be contracted. The Court is permitting the council to levy fees so that the council can, and is able to, act in a lawful way in obtaining the report by the deadline and dealing with and paying those accounts. This is the first step in permitting the council to act according to its legal duties.

***“The Honourable Madam Justice Watchuk”***