

CANADA / JUDGMENT

The Owners, Strata Plan NWS 243 (Re)

2020 BCSC 670

COURT

Supreme Court of British Columbia

DECIDED

14 February 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 670 The Owners, Strata Plan NWS 243 (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

The Owners, Strata Plan NWS 243 (Re),

2020 BCSC 670

Date: 20200214

Docket: S1913384

Registry: Vancouver

Re: The Owners, Strata Plan NWS 243

(also known as the Owners, Strata Plan NW 243)

In the Matter of Division 2 of Part 16 of the

Strata Property Act, SBC 1998, c. 43

Before: The Honourable Mr. Justice Mayer

Oral Reasons for Judgment

Re: Petition to confirm a vote to wind up a strata corporation

In Chambers

Counsel for the Petitioner:

A.L. Baker

L. Kowalewski

The Respondents, appearing in person:

N. Fonarev

J. Fonarev

Place and Date of Hearing:

Vancouver, B.C.

February 14, 2020

Place and Date of Ruling:

Vancouver, B.C.

February 14, 2020

- [1] THE COURT: In this petition to the court the owners of Strata Plan NWS 243 ("Quilchena Park Estates") seek a number of orders pursuant to s. 278.1 of the Strata Property Act, S.B.C. 1998, c. 43, to confirm the resolution passed by over 80% of the owners at a special general meeting held on September 26, 2019. The resolution relates to a proposed winding-up of the strata corporation and cancellation of Strata Plan NWS 243 with the assistance of a liquidator so that Quilchena Park Estates can be sold to the intended purchaser, Ledingham McAllister Communities Ltd. ("Ledingham McAllister").
- [2] It is the position of the petitioner that the resolution should be confirmed by this Court in accordance with the requirements of s. 278.1(5) of the Strata Property Act. Section 278.1 of the Strata Property Act reads as follows:

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,
 - (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.
- [3] Two owners, Mr. Fonarev and Ms. Fonarev, who reside in unit 61 of Quilchena Park Estates, are opposed to the approval of the winding-up resolution. The essence of the concerns of the Fonarevs is that if the winding-up resolution is authorized, a liquidator will then proceed to finalize arrangements for the sale of Quilchena Park Estates to Ledingham McAllister. In particular, their concern is that there is a strong likelihood that Ledingham McAllister will seek to reduce the current proposed purchase price of \$68 million, set out in its conditional offer, to something in the range of \$50 million.
- [4] The Fonarevs' concern is that if Quilchena Park Estates is sold for less than \$68 million that they will receive less than what they consider is the potential fair market value for their unit than they would if they sold their unit on its own after repairs to Quilchena Park Estates are completed. The estimated cost of the necessary repairs to Quilchena Park Estates is \$7 million - or approximately \$100,000 for each member of the strata corporation. For this reason, the Fonarevs contend that the winding-up resolution should not be authorized.
- [5] Mr. Fonarev did not present an alternative solution to try to deal with the current situation - that is, a requirement that in the absence of a sale, \$7 million in repairs will be required to Quilchena Park Estates. Mr. Fonarev accepts that so long as an appropriately high price can be obtained for Quilchena Park Estates that a prudent solution would be to proceed with the sale of the property, given the significant estimated repair costs.
- [6] The materials that I have been provided with indicate that the owners of strata units in Quilchena Park Estates are comprised of a mixture of individuals from the standpoint of age, family status and circumstances. The evidence suggests that for a clear majority of these owners, in excess of the necessary 80%, having to incur repair costs totalling \$7 million (\$100,000 per unit owner) is not in their interest.
- [7] As stated by Madam Justice Loo in *The Owners, Strata Plan VR 2122 v. Wake*, 2017 BCSC 2386, referred to as the Hampstead:

- [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.
- [8] Section 278.1(5) of the Strata Property Act establishes a test that balances the rights and interests of strata property owners and certain other interested persons in determining whether the 80% vote resolution to wind-up a strata corporation should be confirmed or not.
- [9] As was stated in a decision of the Yukon Court, Whitehorse Condominium Corporation No. 95 v. 37724 Yukon Inc., 2013 YKSC 4:

Because condominium owners give up certain rights and privileges associated with private home ownership, it is important that the rights, privileges and obligations of the Act are enforced in a fair and equitable way.

- [10] That is another way of saying that there are benefits and detriments to joint ownership of a single parcel of land. The benefits include the cost savings and convenience that go along with owning property through a strata corporation. When one purchases a strata titled property they must accept that there will come a time when the majority of their fellow strata property owners decide that it is no longer practical or feasible to maintain the strata corporation.
- [11] In this case the circumstances that seem to justify the resolution to wind-up the strata corporation are in my view abundantly clear. That is, the estimated \$7 million required to repair Quilchena Park Estates and a clear desire on the part of well over 80% of the members of the strata corporation to sell the property, rather than pay for such repairs.
- [12] As set out in the decision of Justice Milman in Strata Plan NWS837 (Re), 2018 BCSC 564, the onus is on the opposing respondents to establish the factors that justify refusing an application for an order to confirm a winding-up resolution. In other words, in this case, the onus is on the Fonarevs to establish the existence of factors justifying a refusal of the wind-up resolution.
- [13] As I indicated earlier in my reasons, the Fonarev's principal concern is that the Quilchena Park Estates may ultimately be sold for less than \$68 million - which they contend would be an improvident sale in light of the potential market value of the property if it is repaired. I appreciate the Fonarevs' concern but I am satisfied that there are appropriate mechanisms put in place that will require the liquidator to ensure that a fair price is obtained for Quilchena Park Estates. Ultimately, the members of the strata corporation will have another opportunity to approve the sale price that is finally negotiated for the property.

- [14] With respect to the Fonarevs' concern that the later approval of the sale of Quilchena Park Estates will only require a vote of only 75% of the members of the strata corporation, as opposed to a winding-up resolution which required a vote of 80% or more, that is simply what is required in the Strata Property Act. As I mentioned during Mr. Fonarev's submissions, it is likely that the drafters of the Strata Property Act recognized that there would be some shrinkage in respect of the number of people who are prepared to approve a sale of the property. I referred to this as the "cold-feet factor". In my view, the 75% approval requirement for a sale was put in place to ensure that subsequent steps, after a wind-up resolution requiring 80%, would still require the approval of a substantial majority of the members of the strata corporation.
- [15] That is a long way of saying that I do not consider that a vote requiring 75% or more approving a sale is unfair. The legislation sets out that voting requirement and I am not in a position to change it.
- [16] Going back to the test approving a winding-up of a strata corporation, as was set out in the decision of Madam Justice Loo in the Hamstead:
- [79] the "bests interests of the owners" factor requires a balancing of the competing individual views of whether a sale is appropriate or not.
- [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."
- [17] The issue of whether or not it will be significantly unfair if this wind-up resolution is approved has been canvassed and considered by this Court in a number of decisions. In the Hampstead Madam Justice Loo summarized factors to be considered in determining whether significant unfairness would arise, including the following: whether it can be said that there has been oppressive conduct or unfairly prejudicial conduct or resolutions; whether or not there has been conduct or consequences that are burdensome, harsh, wrongful, lacking in probity or fair dealing; or whether the majority votes are acting in bad faith.
- [18] I just pause to note, as I mentioned during the parties' submissions, that similar language is used in oppression remedy actions. I mention that because in those actions it is a relatively high threshold in order to establish unfairness.
- [19] In this case I am satisfied that the decision of the majority of owners of Quilchena Park Estates (over 80%) was based upon:
- 1) the estimated \$7 million cost of having to repair the property; and
 - 2) the conditional sale price of \$68 million obtained for the property.

- [20] I am satisfied that there were significant efforts to market the property over a relatively extended period of time in order to confirm that the conditional offer of \$68 million is appropriate.
- [21] In summary, I do not find that any significant unfairness will arise if the resolution winding-up the strata corporation is approved. This is not a situation where this resolution can be considered oppressive or unfairly prejudicial. This is a decision which will result in the sale of the property and the property owners being paid out pursuant to an interest schedule, which has been in existence for some time. So in that sense there is no unfairness in terms of how the proceeds or other benefits that will result from the sale of the property will be divided.
- [22] In consideration of the factors set out in s. 278.1(5) of the Strata Property Act I have determined that confirmation of the resolution is in the best interests of the owners globally and will not give rise to significant unfairness to the minority owners or will lead to significant confusion or uncertainty in their affairs or those of the strata corporation.
- [23] I therefore order that the resolution be confirmed and grant each of the orders set out in the notice of application of the petitioner.

"Mayer, J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/06/2020BCSC0670.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/the-owners-strata-plan-nws-243-re-2020>

Prepared on 25 October 2026 · Esheria