

CANADA / JUDGMENT

Walters v. Pareto Platform Inc.

2022 BCSC 2317

COURT

Supreme Court of British Columbia

DECIDED

28 November 2022

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2022 BCSC 2317 Walters v. Pareto Platform Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Walters v. Pareto Platform Inc.,

2022 BCSC 2317

Date: 20221128

Docket: S133467

Registry: Kelowna

Between:

John Walters

Petitioner

And

Pareto Platform Inc. and Duncan MacPherson

Respondents

Before: The Honourable Madam Justice Beames

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

R.L.E. Davis

Counsel for the Respondents:

A.M. Cathcart

Place and Date of Trial/Hearing:

Kelowna, B.C.

November 28, 2022

Place and Date of Judgment:

Kelowna, B.C.

November 28, 2022

- [1] THE COURT: I am going to give reasons now in the matter of Walters v. Pareto Platform Inc. ("the corporation"), which is Kelowna 133467. I am going to be exceptionally brief in my reasons. If necessary, a transcript of the submissions and the exchanges between counsel and myself can be ordered to supplement the reasons that I am going to give right now. In essence, this matter comes before the Court as a petition filed many months ago, initially March of 2022, seeking orders that the respondent corporation be required to provide prescribed financial statements for the years 2018, 2019, and 2020, and for an order that the corporation call an annual general meeting of the shareholders within 30 days of the date of the order.
- [2] When the application was first filed, the corporation's response was to essentially say: you don't need to make any kind of court orders, notwithstanding the fact that we have not filed these financial statements or had them prepared, and notwithstanding the fact that we have not had an annual meeting or an annual general meeting for a number of years. We are going to now deal with those matters and we are going to schedule an annual general meeting for June of 2022, and presumably everything else will be taken care of at that time.
- [3] What actually happened, as I understand it, is that it was not until April of 2022 that the corporation first retained auditors for the purpose of preparing financial statements, and it appears that the financial statements that were first requested by the corporation were actually for the fiscal year of 2021, with no work, as I understand it, having been requested nor done for the fiscal years 2018, 2019, and 2020.
- [4] The matter, I gather, has been back before the court and was set to be heard in June of 2022, but was bumped.
- [5] After giving notice, the corporation did convene an annual meeting, which was then subsequently adjourned due to the 2021 financial statements and auditors' report not being available, and was to be reset on a date to be determined by the chairperson of the meeting.
- [6] No auditor's statements are yet ready for 2021. No date has been set for reconvening and completing the annual general meeting as required.

- [7] What has happened, according to the most recent affidavit material which was handed up to the Court this morning, is that the auditor the corporation selected has essentially said the process is taking longer than anticipated. There is a remaining issue "needing resolution that is outside of the auditors' control, but the auditors' goal is to have the 2021 statements ready not later than December 20, 2022.
- [8] I think it is fair to infer that the remaining issue that is referred to in the new affidavit material is something that the auditors are not able to address themselves without input from the corporation, and consequently that there is some continuing delay on the part of the corporation in this matter that is impeding the completion of the 2021 audited financial statements.
- [9] In addition, the new affidavit material says, as a result of the work that the auditors are essentially doing on the 2021 statements, they have not been able to deal with the 2018, 2019, and 2020 financial statements, which are now probably two, three, and four years overdue, and the auditors have provided email correspondence essentially saying, "We can't even start on those years until April or May, and that once we get started, it is likely to take three months to complete three years of audits."
- [10] So essentially I would summarize what has transpired since the filing of this petition in March of 2022 as not much progress. There clearly are some steps being taken now to prepare the 2021 statements. There appears to be some commitment to prepare the 2018, 2019, and 2020 statements, but on a pretty long timeframe, given the uncontested evidence before the Court that Mr. Walters, the petitioner in this case, has been repeatedly requesting the audited financial statements since at least December 15, 2020, which is almost exactly two years ago.
- [11] That brings me then to the two issues that are before the Court. The first issue is whether an order should be made concerning a deadline for preparation of the historic financial statements for 2018, 2019, and 2020. It is submitted by counsel for the petitioner that the timeframe proposed by the auditors is simply too long, in view of the circumstances that have existed to this point in time, and that a shorter timeframe should be put in place. If that requires the respondent corporation to retain another auditor or to pay premium prices to their current auditors, then that is what ought to happen. The corporation does not object to the preparation of those statements, but says the time frame allowed should reflect the time estimate provided by the auditors.
- [12] The second issue is whether I can or should order that an annual meeting take place within a certain period of time, and that is on the argument that the meeting that was convened in June of 2020, but adjourned without the provision of the financial statements, was not or does not conform with the provisions of the Canada Business Corporations Act, which requires the calling of an annual general meeting and specifically that come from a reading of ss. 133 and 155 of the Canada Business Corporations Act.

- [13] The submission that the meeting has not been called as required relies on a decision from 1928, from the Court of Appeal in British Columbia, which essentially said that in order for a meeting to be called, the purpose of the meeting has to have been fulfilled, and it is not sufficient to simply convene and then adjourn because essentially you would be able to defeat the legislation which requires the provision of financial statements without certain other exceptions being met on an annual basis. So that is the authority relied upon by the petitioner.
- [14] The respondent relies on *Paulson & Co. Inc. v. Algoma Steel Inc.*, 2006 CanLII 116 (ONSC), an Ontario Superior Court of Justice decision from 2006 that essentially said it is enough to send out notice and convene and that essentially is the calling of the meeting. It is argued that there is a distinction to be made between calling of a meeting and holding of a meeting, and that in this case the respondents have in fact met the requirements of the Act by way of the convened and adjourned June 2022 meeting.
- [15] I have concluded that the decision which binds me in this particular case is the *Pioneer Savings & Loan Society* case from the British Columbia Court of Appeal ([1928] 1 D.L.R. 830), and that having given notice of the meeting, convened the meeting, and then adjourned, but without providing financial statements, was not sufficient compliance with the Act.
- [16] Consequently, I am going to order, taking into account the timeline for preparation of the 2021 financial statements provided by the auditors, the requirement to give 21 days' notice, and the practical realities of sending out notice 21 days in advance of the meeting, that Pareto call an annual meeting of the shareholders of Pareto by not later than February 28, 2023.
- [17] With respect to the 2018-20 financial statements, in my view, given the longstanding requests, perhaps demands, for financial statements made by the petitioner in this case, the timeframe proposed is too long. On the other hand, I am mindful of the fact that the auditors obviously have work that has to be done and timeframes that have to be accommodated. Of course, any order is only as against the corporation Pareto Platform Inc., not against any particular auditor. I am going to order that Pareto Platform Inc. provide to John Walters, by not later than May 31, 2023, the financial statements for Pareto that conform to any prescribed requirements for the fiscal years 2018, 2019, and 2020, unless an order extending that time has been granted by this Court before that date.
- [18] With respect to the issue of costs, counsel for Pareto has valiantly argued that some of the court appearances in this matter have not been necessary, that the petition was initially premature, and the like, but in my view it was eminently reasonable and in all likelihood necessary for Mr. Walters, the petitioner, to have filed this petition, to have even gotten this far in the process of having Pareto meet the obligations that it has to its shareholders, and consequently I am going to order that the petitioner is entitled to its costs on this petition at Scale B, payable by the corporation.

"Beames J."

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