

BC SUPREME COURT REMINDS OWNERS AND DEVELOPERS THAT CONSUMER PROTECTION PLAYS AN IMPORTANT ROLE IN THE STRATA PROPERTY ACT

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A recent decision of the BC Supreme Court reminds strata developers and strata lot owners alike that an important feature of the *Strata Property Act* [\[1\]](#) (the "**Act**") is consumer protection.

Background

In *Strata Plan LMS 1495 v 0753874 BC Ltd.*, [\[2\]](#) the owners of strata lots in a phased strata development sought to recover proportionate expenses for common facilities from an owner developer. Normally in a phased strata development the owner developer acts as a proxy for those strata lots not yet built and contributes proportionally to the common facility expenses that arise pending final build-out of the development. In this case, however, the original owner developer transferred its interest (or a portion thereof) in the strata's undeveloped phase to another corporation ("**Corp A**"). A few years later Corp A in turn transferred that interest onto another corporation ("**Corp B**").

The main question for the court was whether Corp B should be considered an "owner developer" under the Act and whether it was thus liable for a proportionate share of the common facility fees of the development.

Decision and Discussion

The Court ultimately decided that Corp B was an "owner developer" under the Act and was therefore responsible for a proportionate share of the common facility fees. The Court embarked on a detailed interpretative analysis of the Act, deciding to follow a "large and liberal" interpretation favouring the strata lot owners rather than a "restrictive" interpretation of the Act advanced by Corp B. Specifically, the Court accepted that the appropriate definition of "owner developer" is derived from the provisions under Part 13 of the Act which deal exclusively with phased developments, rather than the general definition of "owner developer" found in the introductory provisions of the Act.

The Court noted that every piece of legislation must be looked at as being remedial in nature and as such, must be given a "fair, large and liberal" interpretation in order for it to fulfill its objectives. One main objective of

the Act, the Court said, is consumer protection, and held that this feature is especially important in phased developments where potential strata owners are investing in homes and agreeing to pay fees toward properties that will be built at some point in the future. Since such buyers cannot know exactly what they are agreeing to purchase, the Act attempts to level the playing field. The Court held that the Act's provisions regarding phased developments protects buyers from the potential "mischief" that owner developers could commit by transferring their interests to avoid paying common facility expenses. According to the Court, even where there is a series of transactions transferring the interest of the owner developer, all of the rights and responsibilities of the original owner developer transfer as well.

Conclusion

The Court's decision in this case highlights that consumer protection is one important feature of Act and has important consequences for developers and strata lot owners alike. Without ignoring the plain language and meaning of the Act, the courts may favour a large and liberal interpretation of the Act in order to balance the potential information imbalance that sometimes exists in these types of consumer transactions.

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[1] *Strata Property Act*, SBC 1998, ch 43.[ps2id id='1' target='/']

[2] *Strata Plan LMS 1495 v 0753874 BC Ltd.*, 2015 BCSC 2124[ps2id id='2' target='/']

A Cautionary Note

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