WIND-UP UNWOUND: FOR THE FIRST TIME, THE BC SUPREME COURT REJECTS AN APPLICATION TO WIND-UP A STRATA CORPORATION UNDER BILL 40

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The Owners, Strata Plan VR 1966[1] marks the first time the BC Supreme Court has rejected an application to wind-up a strata corporation pursuant to Bill 40 under the *Strata Property Act*[2] (the "Act").

Background

Prior to Bill 40, a winding-up resolution could only be passed by a unanimous vote. However, pursuant to Bill 40, a strata corporation of 5 units or more may now wind itself up voluntarily using a liquidator, by: 1) passing a winding-up resolution by a vote of 80% or higher,[3] and 2) obtaining a court order approving the resolution.[4]

Bill 40 was intended to make it easier for strata corporations to wind themselves up voluntarily, while also providing dissenting owners with an opportunity to voice their concerns about the proposed redevelopment.[5] For more information on the former legislation, please see our prior bulletin from April 2016.

In determining whether to approve a winding-up resolution, a court is to consider a variety of factors, including the "best interests of the owners"[6] and whether it would cause "significant confusion and uncertainty in the affairs of the strata corporation or the owners."[7]

The Decision

The strata corporation in *Strata Plan VR 1966* (the "**Petitioner**") passed a winding-up resolution by a vote of 83% and sought court approval of the resolution pursuant to s. 278 of the Act (the "Application"). The Application was opposed by an owner and a tenant (the "**Respondents**") on the basis that the resolution was "fatally deficient" for failing to comply with mandatory legislative requirements.[8] Specifically, ss. 277 and 278 of the Act.

Taken together, ss. 277 and 278 require that an "interest schedule," which lists the name, the postal address, and the estimated value of the interest of each holder of a financial registered charge, be approved as part of the winding-up resolution.[9] The interest schedule is meant to serve as a "roadmap" for the liquidator for the

purposes of rateable distribution of the proceeds of sale.[10]

The interest schedule provided by the Petitioner failed to include the aforementioned "value estimates" as required under the Act. The Petitioner gave no reasons for such omission and instead argued that the omission amounted to a "rectifiable procedural irregularity" and should not preclude the owners in favour of the resolution from obtaining court approval to proceed with the winding-up process.[11] The Petitioner also emphasized that there was no evidence that anyone had been prejudiced by the omission or that it had a distorting impact on the voting process.[12]

The Court rejected the Petitioner's argument and found that to overlook the deficiency and approve the resolution would be to "rewrite the legislation."[13] The Court held that because the legislature has specifically identified certain requirements that can be overlooked without affecting the validity of a winding-up resolution, being the 60 day deadline for bringing an application after a winding-up vote has been held, the legislation has turned its mind to identify rectifiable procedural irregularities. As the legislature does not similarly treat the aforementioned value estimates, the Court held that they are an essential term of the liquidator's mandate and not "just another source of information that might affect the vote."[14] Consequently, the Court concluded that the failure to include the value estimate from the interest schedule was not a mere procedural irregularity but an "omission of substance" that invalidated the resolution.[15]

Reminder

This decision is an important reminder to strata corporations to carefully follow the procedural requirements set out in the Act when winding-up a strata corporation. Even if a strong majority of strata owners support a winding-up resolution, the court has indicated that it will protect those parties opposed to resolution by ensuring that the procedural provisions are strictly complied with. If a court fails to approve a winding-up resolution, the strata corporation must begin the entire process from scratch, which may not be economically feasible and may frustrate the potential sale of the property a strata corporation pertains to. We recommend seeking legal advice to avoid the negative implications of non-compliance with the procedural provisions of Bill 40.

by Dharam Dhillon, Damon Chisholm and Emily Csiszar, Articled Student

[1] 2017 BCSC 1661[*Strata Plan VR*].
[2] *Strata Property Act*, SBC 1998, c 43.
[3] *Strata Property Act*, *ibid*, s 277(1).
[4] *Strata Property Act*, *ibid*, s 278.1.
[5] *Strata Plan VR*, *supra* note 1 at para 1.
[6] *Strata Property Act*, *supra* note 2, s 278.1(a).

[7] *Strata Property Act, ibid*, s 278.1(b)(ii).
[8] *Strata Plan VR, supra* note 1 at para 7.
[9] *Strata Property Act*, supra note 2, ss 277, 278.
[10] *Strata Plan VR*, supra note 1 at para 46.
[11] *Ibid* at para 8.
[12] *Ibid* at para 7.
[13] *Ibid* at para 36.
[14] *Ibid* at para 51.
[15] *Ibid* at para 51.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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