Cassels

No Standing for Stratas: The British Columbia Court of Appeal Confirms that Strata Corporations Cannot Advance Representative REDMA Claims on Behalf of Owners

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In *Findlay v. The Owners, Strata EPS401*, the British Columbia Court of Appeal (BCCA) finally determined whether strata corporations can sue on behalf of owners for representative claims under the *Real Estate Development Marketing Act*, SBC 2004, c. 41 (REDMA).[1] While the issue has been raised in the courts before, this is the first time it was considered and decided by the British Columbia Supreme Court (BCSC) and then determined on appeal.[2]

The plaintiff strata corporation relied on section 171 of the *Strata Property Act*, SBC 1998, c. 43 (the SPA) to advance a representative action on behalf of all owners for alleged misrepresentations by the developer pursuant to section 22(3) of REDMA.[3]

At trial, the BCSC held that the strata corporation had standing to pursue the claim pursuant section 171 of the SPA and ultimately awarded damages against a director of the developer for misrepresentation.

The defendant director appealed on the basis that the BCSC erred in its interpretation of the relevant sections of the SPA and REDMA. On appeal, the BCCA held in part the following:

- Properly construed, the relevant provisions of the SPA and REDMA do not empower strata corporations to bring REDMA claims on behalf of all owners;
- The scope of section 171 of the SPA enables strata corporations to sue about any matter affecting the strata corporation, but it is limited to matters impacting the <u>owners</u> as a collective and otherwise “affecting” the strata corporation; and
- Section 22(3) of REDMA creates a <u>personal</u> cause of action that is only available to the purchaser of a development unit in the development property <u>from the developer</u>, i.e., the initial purchaser, and it is not otherwise something that “affects” the strata corporation, as contemplated in the SPA.

THE BCSC DECISION

A developer purchased a 44-unit rental building and converted the suites into individual condominium units. Prospective purchasers were provided with marketing information and a disclosure statement from the developer, signed and filed by the defendant, a director of the developer, personally and on behalf of the developer. In the disclosure statement, the developer made several commitments, including creating a contingency fund and replacing plumbing, the asphalt parking surface, and the entrance communication system, none which were ultimately fulfilled.

The Owners, Strata EPS401 (the "Strata Corporation") brought an action for misrepresentation under section 22(3) of the REDMA against the defendant. At the commencement of the action, all owners were the initial purchasers that acquired the units from the developer. However, by the time of trial, 30 percent of the units were owned by subsequent purchasers not party to the disclosure statement.

At trial, the BCSC held that the Strata Corporation had standing bring the claim on behalf of all strata owners by virtue of section 171 of the SPA, which empowers a strata corporation to sue on behalf of all strata owners in respect of matters affecting the strata corporation, even though the Strata Corporation now included subsequent purchasers.[4] The Court interpreted section 171 of the SPA broadly, finding that it did support the Strata Corporation being able to bring a representative action on behalf of the owners. The Court went on to find that the REDMA claim being advanced fell within the types of claims contemplated by section 171.

Ultimately, the Court found the defendant was liable for misrepresentation and awarded damages.

THE BCCA DECISION

On appeal, the BCCA considered how the statutory schemes of the SPA and REDMA operate in conjunction and found that the Court below did not properly consider both schemes together in its interpretation analysis. The Court held that, read harmoniously with one other, the provisions of the SPA and REDMA did not support the BCSC's conclusion, and it unanimously held that the Strata Corporation did not have standing to sue.[5]

The Court identified two goals of REDMA, being: (1) to protect purchasers of development units by ensuring that they receive all material facts when a development is marketed; and (2) to enable the real estate development sector to operate profitably. Section 22(3) of REDMA provides a purchaser of a development unit a remedy if the developer includes a misrepresentation in a disclosure statement. Under this section, the purchaser can claim damages not only against the developer, but also directors or persons who had signed the disclosure statement.[6]

In conducting its interpretation analysis, the BCCA confirmed that properly construed, a claim for misrepresentation under REDMA is only available to initial purchasers of a unit from a developer, not subsequent owners being represented by a strata corporation. The Court found that, among other things, REDMA's purpose as consumer protection legislation directed at specific individuals, the definition of "purchaser" within the legislation being specific to someone buying from a developer, and the deemed reliance of a purchaser on misrepresentations within a disclosure statement, were all indicative of such a conclusion.[7] Indeed, the SPA distinguishes between "owners" and "purchasers", and section 171 only allows a strata corporation to sue on behalf of the "owners" as a collective.[8]

The Court also found that the personal statutory claims under REDMA are "fundamentally different" from areas in which strata corporations have a capacity to sue under section 171 of the SPA on behalf of strata owners as a collective. The latter, the BCCA held, are limited to those claims which "affect" the strata corporation, including for example claims in respect of common property for which the strata corporation is responsible for repair and maintenance. While the misrepresentation claims may have affected some owners in the owners' capacity as initial purchasers, they do not otherwise directly affect owners who were not purchasers from the developer.[9]

TAKEAWAYS

This decision provides clarity on the scope of liability under the REDMA, which continues after a development completes, and the scope of a strata corporation's ability to sue in respect of REDMA claims. The BCCA rejected the trial decision as improperly expanding a strata corporation's authority to sue and confirmed that strata corporations cannot advance claims based on personal statutory causes of action that do not otherwise affect the strata corporation and are not available to "owners". The BCCA's conclusion aligns with previous guidance from B.C. courts respecting the role of strata corporations as agents of the owners, and the fact that section 171 does remove from or add to an individual owner's common law rights incidental to ownership.[10]

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[1] 2024 BCCA 305 [Appeal Decision].

[2] SBC 2004, c 41 [REDMA].

[3] 2023 BCSC 500 [BCSC Decision]

[4] See *The Owners, Strata EPS401 v Findlay*, 2023 BCSC 500 at paras 28-32.

[5] Appeal Decision at paras 46-49, 53, 66-68, 70, 73-75, 79, 92-97.

[6] SPA, s 22(3)(b).

[7] Appeal Decision at paras 67-74, 76-79.

[8] Appeal decision at para 81-82.

[9] Appeal Decision at para 66

[10] See e.g., *Hamilton v. Ball, 2006* BCCA 243; *0790482 B.C. Ltd. v KBK No. 11 Ventures Ltd.*, 2022 BCSC 1095 at paras 104-106.

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