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Hole in One: Ontario Superior Court of Justice Dismisses Oppression Class Action Against North Halton Golf and Country Club

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The Ontario Superior Court of Justice recently granted summary judgment dismissing an oppression class action in which the share capital structure and two recent equity financings by North Halton Golf and Country Club Ltd. (North Halton or the Company) were alleged to be oppressive to the minority non-golfing member shareholder class. The Court held that the stated expectations of the class regarding share price and liquidity were not objectively reasonable and that the board of directors exercised its business judgment in a manner that fairly considered the interests of all stakeholders, including the expectation of the class to be treated fairly in any share issuances. The full decision is available [here](#).

Key Takeaways

- **Summary disposition available for oppression class actions.** Oppression class actions have been fairly rare in Canada. Summary judgment motions can be an expeditious and efficient means to resolve complex oppression class actions notwithstanding voluminous evidence of differing stakeholder expectations.
- **Deference to business judgment reaffirmed.** Courts will not interfere with or “second guess” the business judgment of the board of directors acting in the best interests of the company provided the board followed a comprehensive, reasoned and informed decision-making process including consideration of the interests of all stakeholders.
- **Reasonable stakeholder expectations determined on an objective and contextual analysis.** The question of reasonable expectations looms large in circumstances where different stakeholders have different expectations, which may conflict or be impacted differently by corporate actions. Court discretion will only be exercised for stakeholder expectations that are objectively reasonable in light of the prevailing business circumstances in which the company operates. Expectations based upon a belief that a past practice must always prevail are not reasonable.

Summary and Background

North Halton is a private company which operates and manages a golf and country club (the Club). The class consists of the non-golfing member shareholders of the Company (approximately 26% of the Company’s approximately 460 shareholders).

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Following a shareholder-approved capital restructuring in 2008, all new golf members were required to become shareholders of North Halton, certain share ownership and sale restrictions were adopted, and a share sale list system was implemented to facilitate share sales to new members from both treasury and individual shareholders.

The common issue in the class action related to the implementation in 2015 of two equity issuance programs at prices below historic treasury issuances and the value of the Company's assets (primarily its land). The equity issuance programs were implemented by the Company to address prevailing business, financial, and market conditions. They followed a review and consideration by the board of directors of various strategic alternatives and the implications of such alternatives on the Company and its various stakeholders. These programs were approved by a majority of shareholders, most of whom were members of the Club, following delivery of detailed disclosure from the board of directors regarding the proposed equity issuance program and its rationale, the various alternatives considered, and an overview of prevailing business, financial, and market conditions. As a result of the equity issuance programs, the Company attracted new member shareholders, increased revenue, operated profitably again, and effectively maintained operations.

The class claimed that the equity issuance programs were oppressive because they unfairly disregarded the interests of non-golfing shareholders (many of whom wished to sell their shares) by effectively "giving away" shareholder equity for the benefit of golfing members and setting a price which was below historic prices for treasury issuances, and well below the value of the assets. The class also claimed that the Company's directors had breached their fiduciary duties in proposing and implementing the equity issuance programs.

The action was certified as a class proceeding in 2016. The class moved for summary judgment in May 2018, seeking a windup of North Halton, a buy-out of the shares of the class, or damages in an amount equal to the "equity given away" by the Company in selling shares at "reduced" prices. Extensive affidavit evidence was filed by both parties.

The Decision

Although the evidence filed by the class contained numerous affidavits from class members setting out varied expectations, at the hearing the only expectations advanced by the class were that: (i) there would be no sale of shares from treasury at prices less than historic issuances; and (ii) the minority non-golfing shareholders would be treated fairly in share pricing decisions – which should include pricing determinations based on the fair value of assets similar to the process followed as part of the 2008 equity restructuring. At the hearing, the class also limited its requested relief to damages only.

The Company argued that there was no basis to support a finding that any of the expectations articulated by the class (other than the expectation generally to be treated fairly) were objectively reasonable given the full

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factual context. The Company argued that the directors (i) engaged in a fair and proper review of various strategic alternatives and their effects on the Company and its stakeholders; (ii) provided shareholders with detailed information as to those alternatives; and (iii) recommended the equity issuance programs as the preferred alternative to maintain the business as a going concern while preserving and increasing value.

The Court dismissed the motion for summary judgment by the class and granted judgment in favour of the Company, dismissing the class action in its entirety. The Court accepted the Company's position and found that the expectations of the class were not objectively reasonable as assessed in the full factual context.

The Court held that reasonable expectations are not static and must be assessed in light of the prevailing business circumstances in which the company operates and not solely with reference to unique and historic events or past practices. The Court also found that while the expectation generally to be treated fairly was reasonable, there was no basis for a finding of unfair or oppressive conduct. By recommending the share sale programs, the board provided a mechanism to avoid consistent losses, decreased membership, and dwindling revenue, so that North Halton could effectively maintain operations (and likely benefit from increased land value over time). Rather than being unfair, this process was found by the Court to be reasoned and informed, and consistent with the best interests of North Halton. On that basis, there was no reason to interfere with the board's business judgment.

The Upshot

This decision reaffirms the Court's reluctance to interfere with the business judgment of an informed board of directors acting in good faith. In deferring to the board's business judgment, the Court cited extensively the evidence of its comprehensive deliberations, assessment of alternatives, engagement with shareholders and focus on the best interests of the Company as opposed to any particular stakeholder group.

Oppression class actions are rare, and this decision suggests that may be due to the inherent difficulty in proving the reasonable expectations of a group of shareholders when each individual member has had different experiences and has made decisions *vis-à-vis* their investment for different reasons. This is especially so where the class is large (as was the case here, with over 100 shareholders).

Although the reasonableness of shareholder expectations was in issue, the credibility of the many affiants was not. Accordingly, despite the voluminous evidence, the parties and the Court agreed that the matter could be resolved in its entirety on the motion for summary judgment brought by the class. This approach avoided the expense that would have been incurred in connection with a class action trial without compromising the Court's ability to consider and address each of the issues raised. Where questions of credibility are not in issue, motions for summary judgment may be sufficient to resolve complicated questions in a more efficient manner.

North Halton was represented by Wendy Berman, Lara Jackson and John M. Picone.

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If you have any questions about this decision, its implications, or class actions more generally, please contact them or any other member of our Class Actions Group.

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¹ 2016 ONSC 2962.

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