



NO. S-236296
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *STRATA PROPERTY ACT*, S.B.C. 1998, c.43

and

**IN THE MATTER OF THE APPLICATION FOR THE WIND-UP OF
STRATA PLAN NW2599**

BETWEEN:

THE OWNERS, STRATA PLAN NW2599,
CROWE MACKAY & COMPANY LTD., AS LIQUIDATOR OF
THE OWNERS, STRATA PLAN NW2599,
and each the parties set out in Appendix "A" to the Petition

PETITIONERS

AND:

VANCOUVER CITY SAVINGS CREDIT UNION,
RELIABLE MORTGAGES INVESTMENT CORP.,
TORONTO DOMINION BANK,
COAST CAPITAL SAVINGS FEDERAL CREDIT UNION,
ROYAL BANK OF CANADA,
SCOTIA MORTGAGE CORPORATION,
COMPUTERSHARE TRUST COMPANY OF CANADA,
CANADIAN IMPERIAL BANK OF COMMERCE,
FIRST WEST CREDIT UNION,
THE BANK OF NOVA SCOTIA,
THE CROWN IN RIGHT OF BRITISH COLUMBIA,
CITY OF CHILLIWACK
and each the parties set out in Appendix "B" to the Petition

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

The Respondents, including those set out in Appendices "B" to this Petition.

This proceeding is brought for the relief set out in Part 1 below, by

- the persons named as Petitioners in the style of proceedings above

If you intend to respond to this Petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for Response to Petition described below, and
- (b) serve on the Petitioners
 - (i) 2 copies of the filed Response to Petition; and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

Time for Response to Petition

A Response to Petition must be filed and served on the Petitioners,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for Response has been set by order of the court, within that time.

The address of the Registry is 800 Smithe Street, Vancouver, British Columbia.

The ADDRESS FOR SERVICE of the Petitioners is c/o Lawson Lundell LLP, 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Fax number for delivery is: (604) 669-1620.

Email address for delivery is: proberts@lawsonlundell.com

The name and office address of the Petitioner's solicitor is: Lawson Lundell LLP, 1600 - 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2 (Attention: Peter J. Roberts, K.C.).

CLAIM OF PETITIONERS

Part 1: ORDERS SOUGHT

1. An order confirming the resolution passed at the special general meeting of the strata corporation, The Owners, Strata Plan NW2599, held on August 24, 2023 at which it was resolved to:
 - (a) approve the voluntary winding-up of strata corporation, The Owners, Strata Plan NW2599, and its dissolution;
 - (b) approve the appointment of a liquidator of the Strata Corporation with the particular liquidator being Crowe McKay & Company Ltd. (the “**Liquidator**”) to wind up the strata corporation, The Owners, Strata Plan NW2599;
 - (c) cancel Strata Plan NW2599;
 - (d) dissolve the strata corporation, The Owners, Strata Plan NW2599;
 - (e) confirm the Interest Schedule to be applied pursuant to section 278 of the *Strata Property Act* (the “**Interest Schedule**”);
 - (f) approve the estimate of costs of winding up of the strata corporation, The Owners, Strata Plan NW2599; and
 - (g) surrender to the Liquidator each owner’s interest in:
 - (i) the land shown on Strata Plan NW2599, including the common property (the “**Hazelwood Manor Lands**”); and
 - (ii) the personal property held by or on behalf of the strata corporation, The Owners, Strata Plan NW2599.
2. An order appointing Crowe McKay & Company Ltd. as the Liquidator of the strata corporation, The Owners, Strata Plan NW2599.

3. An order that, upon the filing of a certified copy of this order in the Land Title Office, the interest of each of the Petitioners set out in Appendix “A” and each of the Respondents set out on Appendix “B” to the Petition (collectively, the “**Strata Owners**”) in:

- (a) the Hazelwood Manor Lands; and
- (b) the Strata Personal Property.

be surrendered to and vests in the Liquidator, subject to the mortgages, assignments of rent and other charges registered on title to Strata Lots 1 to 39 of the Hazelwood Manor.

4. A declaration that, upon the surrender to and vesting in the Liquidator of title to the Hazelwood Manor Lands, it has been proven to the satisfaction of the court on investigation that the Liquidator has good, safeholding and marketable title to the Hazelwood Manor Lands.

5. An Order confirming that the authority and powers of the Liquidator includes:

- (a) to be paid reasonable remuneration out of the proceeds of any sale of the Hazelwood Manor Lands or the Strata Personal Property, subject to the right of any party to assess that remuneration;
- (b) to employ or retain such other professional services or advisors as are reasonably necessary for the winding up of the strata corporation, The Owners, Strata Plan NW2599, the cancellation of Strata Plan NW2599 and the marketing and sale of the Hazelwood Manor Lands and the Strata Personal Property, including legal counsel, realtors and appraisers;
- (c) to publish a notice in compliance with section 331 of the *Business Corporations Act* in the Gazette and a newspaper circulating in the Chilliwack area;
- (d) to deal with creditors of the strata corporation, The Owners, Strata Plan NW2599, including the payment, compromise or settlement of any claims by those creditors;
- (e) to pay costs, charges and expenses properly incurred and to be incurred in relation to the winding up of the strata corporation, The Owners, Strata Plan NW2599 and the cancellation of Strata Plan NW2599;
- (f) to market and negotiate the sale of the Hazelwood Manor Lands and the Strata Personal Property;
- (g) to sell the Hazelwood Manor Lands, subject either to the requirements of section 282 of the *Strata Property Act* or further order of the court;

- (h) to distribute the proceeds from the sale of the Hazelwood Manor Lands and the Strata Personal Property in accordance with the Interest Schedule; and
- (i) at the sole discretion of the Liquidator, to seek further orders or directions as may be necessary from the Court.

6. An order approving the sale of the Hazelwood Lands to Ratzlaff Development Corp. (the “**Purchaser**”) pursuant to the terms of the Purchase and Sale Agreement between the Purchaser and The Owners, Strata Plan NW2599 dated for reference July 4, 2023, as amended (the “**PSA**”).

7. An Order confirming the Interest Schedule and that the Interest Schedule shall be the interest schedule for the purposes of sections 278 and 280 of the *Strata Property Act* and shall be used to determine each individual Strata Owners’ share of the proceeds of distribution on the winding-up of Strata Plan NW2599, including the proceeds of sale of the Angus Place Lands and the Strata Personal Property.

8. Pursuant to section 100(4)(a) of the *Land Title Act*, R.S.B.C. 1996, c.250, an order deeming that the consents of the owners in fee simple of each of the strata units comprising the Hazelwood Manor Lands and each holder of a registered charge on title to any of the strata units comprising the Hazelwood Manor Lands are deemed to have been obtained and such consent is otherwise dispensed with for the purposes of filing any reference plan or an explanatory plan with the Land Title Office in relation to the Hazelwood Manor Lands.

9. An order that the Petitioner is entitled to recover its costs of this proceeding, on a solicitor and client basis, and such costs shall be paid from, and form a charge upon, the proceeds of the sale of the Hazelwood Manor Lands, including any deposit.

10. An order that, if necessary, the proceeds from the sale of the Hazelwood Manor Lands and the Strata Personal Property shall be paid into an interest bearing trust account held by counsel for the Petitioners, Lawson Lundell LLP, and shall be paid out as directed by the Liquidator in accordance with the Interest Schedule.

11. An order that, upon closing in accordance with the terms of the Purchase & Sale Agreement, the sale proceeds, including deposits and after adjustments, shall be paid by or on behalf of the Purchaser to Lawson Lundell LLP in trust and may be paid out or dealt with by Lawson Lundell LLP in the following manner in accordance with the terms of this Order and at the direction of the Liquidator:

- (a) Firstly, in payment of all matters of adjustment with respect to the sale of the Hazelwood Manor Lands, including without limitation outstanding water and sewer rates, and interest and penalties thereon owing in connection with the Lands (the “**Adjustments**”) and, in the event any owner(s) is responsible for all or a part of the Adjustments paid pursuant to this subparagraph, then the amount of the Adjustments attributable to that owner(s) and paid from the sale proceeds (the “**Individual Adjustment**”) shall be deducted from that portion of the sale proceeds otherwise to be paid to that owner(s);
- (b) Secondly, in payment of any legal fees, including disbursements and taxes, real estate commission, appraiser’s fees and other similar expenses incurred by the Petitioners in relation to this proceeding and the sale of the Hazelwood Manor Lands;
- (c) Thirdly, the remainder of the sale proceeds shall be divided rateably among the owners of the Hazelwood Manor Lands in accordance with their entitlement under the Interest Schedule and, in advance of any payment to the owners;
 - (i) any Individual Adjustments paid on behalf of the particular owner(s) shall be deducted from the individual entitlement of the particular owner(s);
 - (ii) in the case of any owner(s) with mortgages and/or other financial charges or encumbrances registered on title to their interest in the Hazelwood Manor Lands, payment of the outstanding balance on such obligations shall be made to each of the mortgagees and/or creditors (as the case may be) from the individual entitlement of the particular owner(s); and
 - (iii) the remainder of the sale proceeds attributed to a particular owner(s) shall be paid to that owner(s) or as directed in writing by that owner(s).

12. The parties to this proceeding be at liberty to apply to Court for such further and other directions and orders as may be necessary to carry out the full purpose and intent of these Orders, including the approval of any sale of the land shown on Stata Plan NW2599.

Part 2: FACTUAL BASIS

13. The strata corporation, The Owners, Strata Plan NW2599, (the “**Hazelwood Manor Strata**”) is comprised of 39 residential strata lots and the associated common property. The Hazelwood Manor Strata is located at 9282 Hazel Street, Chilliwack, B.C.
14. The Petitioners are the Hazelwood Manor Strata and the registered owners of 29 the 39 strata lots in the Hazelwood Manor Strata.
15. The Respondents listed in Appendix B to this Petition are the registered owners of the remaining 10 strata lots of the Hazelwood Manor Strata.
16. The other named Respondents to this Petition are the financial and other charge holders registered against title to the individual strata lots of the Hazelwood Manor Strata.
17. The Hazelwood Manor Strata was created in 1987 and was a cement foundation, wooden frame three story residential building. The Hazelwood Manor Strata building burned down in a fire on July 29, 2021 and was completely destroyed.
18. The owners of the Hazelwood Manor Strata do not wish to rebuild the building and, instead, wish to wind-up the Hazelwood Manor Strata and sell the lands to a developer. The Hazelwood Manor Strata engaged Avison & Young as the commercial brokers to market the lands.
19. Ratzlaff Development Corp. (the “**Purchaser**”) signed a Purchase and Sale Agreement with strata council of the Hazelwood Manor Strata, dated for reference July 4, 2023, (the “**PSA**”). The sale price in the PSA is \$4,750,000.00.
20. The Hazelwood Manor Strata does not have any other land held in the name of or on behalf of it that is not shown on Strata Plan NW2599.
21. The Hazelwood Manor Strata held a special general meeting on August 24, 2023 (the “**SGM**”) to consider resolutions to wind-up and cancel the strata plan and consider the approval of the PSA. At the SGM, all 39 strata lots of the Hazelwood Manor Strata were present or otherwise represented by proxy. At the SGM, the resolution to wind-up the Hazelwood

Manor Strata and sell it to the Purchaser pursuant to the terms of the PSA received 39 affirmative votes and nil negative votes and, requiring an 80% majority vote, passed.

Part 3: LEGAL BASIS

22. The Petitioners rely upon Rules 1-3, 2-1, 4-4, 13-5, 14-1, 16-1 of the *Supreme Court Civil Rules*, sections 52, 160 and 272 to 285 of the *Strata Property Act*, S.B.C. 1998, c. 43 (the “SPA”), Part 10 of the *Business Corporations Act*, R.S.B.C. 2002, c. 57 and sections 34 and 100 of the *Land Title Act*, R.S.B.C. 1996, c.250.

Strata Wind-Up

23. A resolution to appoint a liquidator and wind-up a strata corporation requires an 80% vote of all eligible voters.

Section 277, SPA.

24. Section 278.1(5) of the SPA provides:

In determining whether to make an order under subsection (4), the court must consider

- (a) the best interests of the owners, and
- (b) the probability and extent, if the winding-up resolution is confirmed or not confirmed, of
 - (i) significant unfairness to one or more
 - (A) owners,
 - (B) holders of registered charges against land shown on the strata plan or land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, or
 - (C) other creditors, and
 - (ii) significant confusion and uncertainty in the affairs of the strata corporation or of the owners.

25. “Significant unfairness”, in other contexts, is described as encompassing oppressive conduct and unfairly prejudicial conduct or resolutions. It is conduct or consequences that are “burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad

faith.” The modifying term “significant” indicates that the “unfairness” must be oppressive or transcend beyond mere prejudice or trifling unfairness. It must be is to be “unfairness” that is “of great importance or consequence.”

Dollan v. The Owners, Strata Plan BCS 1589, 2012 BCCA 44, paras. 25-26.

26. The SPA is a foundational document for strata corporation and strata owners. Strata unit owners give up certain rights and privileges that are otherwise associated with private home ownership when buying into a strata development.

Whitehorse Condominium Corporation No. 95 v. 37724 Yukon Inc., 2013 YKSC 4.

27. A strata operates as democratic society in which each owner has many of the rights associated with sole ownership of real property, but in which, having regard to their co-ownership with the others, some of those rights are subordinated to the will of the majority. An equitable balance must exist between the independence of the individual owners and the interdependence of them all in a co-operative community.

2475813 Nova Scotia Ltd. v. Rodgers, 2001 NSCA 12.

28. The SPA provides for the termination or amendment of strata corporations and strata plans. The rights, privileges and obligations of the SPA ought to be enforced in a fair and equitable way. Assessing the “probability of unfairness” requires a consideration of the rights of all owners and any inequity in treatment as between them.

Whitehorse Condominium, supra.

29. In determining how to reconcile individual and collective rights in the SPA, the court must consider:

- (a) the number of owners seeking relief;
- (b) whether the order sought was in the best interests of the Strata Corporation; and
- (c) whether inaction would unfairly prejudice the applicants.

Abdoh v. The Owners of Strata Plan KAS2003, 2014 BCCA 270, para. 20.

30. Lastly, the court must assess whether a refusal to wind-up a strata will result in confusion and uncertainty. This includes an assessment of whether there is some existing uncertainty or confusion that can only be resolved by winding-up the strata. It involves a consideration of the rights and interests of all owners and a balancing of equitable interests with justice and the “reasonable expectations” of the parties.

Whitehorse Condominium, supra;
Whitehorse Condominium Corporation No. 95 v. 37724 Yukon Inc., 2014 YKSC 2.

31. It is appropriate for Wind-up orders for strata corporations to contain terms with respect to Land Title Office requirements and for the protection of the charges of financial institutions.

The Owners, Strata Plan NW422 v. Khlybov, 2016 BCSC 285.

32. It is in the best interest of the owners and the strata corporation that the Hazelwood Manor Strata be wound up and the Hazelwood Manor Lands be sold. The owners of all 39 strata lots voted in favour of this at the SGM. No interest holder in the Hazelwood Manor Lands will be prejudiced by the wind-up. For these reasons, the court ought to confirm the wind-up of the Hazelwood Manor Strata, confirm the appointment of the Liquidator and approve the sale of the Hazelwood Manor Lands to the Purchaser.

Part 4: MATERIAL TO BE RELIED ON

33. Affidavit #1 of E. Abramovich, made September 1, 2023.

34. Affidavit #1 of J. Sych, made August 31, 2023.

35. Affidavit #1 of D. Lai, made September 12, 2023.

The Petitioners estimate that the hearing of the Petition will take 60 minutes.

Dated at the City of Vancouver, in the Province of British Columbia, this 12th day of September, 2023.



Lawson Lundell LLP
Solicitors for the Petitioners

This Petition to the Court is filed by Peter J. Roberts, K.C., of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____
of Part 1 of this Petition

with the following variations and additional terms:

Date:

Signature of Judge Master

HAZELWOOD MANOR
APPENDIX "A" TO THE PETITION

REGISTERED OWNER NAME(S)	UNIT	Strata lot
Zaw Paing	112	2
Echo Island Ventures Inc.	113	3
Bajinder Kaur Burrows	101	4
James Christian Wiles	102	5
Chilliwack Housing for Homeless Foundation	103	6
Christopher Chua Siongco and Mary Jane Siongco	104	7
Yuen Kwan Irene Mak	105	8
Dmitry Dolzhikov and Elina Dolzhikov	106	9
Rachel Margaret Taylor	107	10
Susan Loraine Linderman	108	11
Malvin Mariano Marinas and Medielyn Marinas	109	12
Graham Jon Danziger and Christeen Ann Cote	110	13
Nathan Scott Williams and Katelyn Christine Williams	201	17
Sabeen Samee Saleem Hasoun	203	19
Douglas Alan Villiers Surtees	204	20
Shailendera Vika Chand	205	21
Gursharn Singh Mann	206	22
James Wilfred Clegg and Diane May Clegg	208	24
Tyler Joseph Gaudet	209	25
Chilliwack Housing for Homeless Foundation	210	26
Peter Morley Fort and Anh My Foort	331	27
Gabriella Por	312	28
Michael Mark Niebergal and Nicole Lee Niebergal	313	29
Chilliwack Housing for Homeless Foundation	301	30
Baljinder Kaur Burrows	302	31
Avnatz Holdings Ltd.	303	32
Elianne Abramovich	304	33
Flyright Holding Co. Ltd.	306	35
Connor Tyler Goodman	307	36
George Douglas Ferraby	308	37
Wesley Rahn	310	39

HAZELWOOD MANOR
APPENDIX "B" TO THE PETITION

REGISTERED OWNER NAME(S)	UNIT	Strata lot	Owner E-mail Address	Mailing Address
Ken Cheung and Yuen Wah Cho	111	1	kenc995@gmail.com	202 - 8540 Citation Drive Richmond, B.C. V6Y 3A3
Ian Harlow Burrows	101	4	balburrows@hotmail.com	4785 36 Avenue Delta, B.C. V4K 3N2
695616 B.C. Ltd.	211	14	pevans3131@aol.com	280 Scarborough Road Bowen Island, B.C. V0N 1G1
Paul George Stock	212	15	paulstock.306@gmail.com	Suite 1225 - 5500 Mitchinson Way Regina, Saskatchewan S4W 0N9
Jose Morales	213	16	jose.morales@live.ca	6504 197 Street Langley, B.C. V2Y 1H9
Kendelle Louise Moscatello and Christopher John Moscatello	202	18	moscatellochris@gmail.com	21710 45th Ave Langley, B.C. V3A 8E5
Adrienne Marie Roberts and John David Roberts	202	18	smilewithad@gmail.com	11641 - 238A Street Maple Ridge, B.C. V4R 2V6
Kendelle Louise Moscatello and Christopher John Moscatello	207	23	moscatellochris@gmail.com	21710 45th Ave Langley, B.C. V3A 8E5
Adrienne Marie Roberts and John David Roberts	207	23	smilewithad@gmail.com	11641 - 238A Street Maple Ridge, B.C. V4R 2V6
Ian Harlow Burrows	302	31	balburrows@hotmail.com	4785 36 Avenue Delta, B.C. V4K 3N2
Henrik Tomas Aslin	305	34	Henrik73@gmail.com	2135 Grant Ave. Port Coquitlam, B.C. V3B 1R1
Ross Elner Stokke and Sheron Leonie Rhule	309	38	rossripinski@gmail.com	5590 Thom Creek Drive Chilliwack, B.C. V2R 5Z6

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

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PETITIONERS

AND:

VANCOUVER CITY SAVINGS CREDIT UNION
and others and each the parties set out in Appendix
"B" to the Petition

RESPONDENTS

PETITION TO THE COURT



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456
Attention: Peter J. Roberts, K.C.

PJR/sea