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COLUMN: BANKING ON CORPORATE

Keeping corporate law simple

Corporate remedies are not a panacea; each case properly depends on its facts, notwithstanding their complexity

AS I WRITE this, there is much discussion of the great power of certain tools. In the midst of a pandemic, certain presidential sources are discussing the potential utility of introducing heat and light into the human body and even the possible benefits of ingesting household cleaning products. Where commercial relationships are concerned, it may seem that corporate law offers a limitless source of remedies. In fact, I hear that question all the time: "Corporate lawyers, is there anything you can't do?" But the recent Ontario decision in *AIMCO Re GP Corp. v. CHC MPAR Church Holdings Inc.* reminded all that there are limits.

That case revolved around a co-ownership of certain development properties in Toronto. The co-owners were AIMCO and a limited partnership. The general partner of that limited partnership was a corporation owned (50 per cent each) by CHC Realty Development Corp. and MPAR Holdings Inc., although neither was an investor in the limited partnership. MPAR was the development manager and CHC was the fundraiser. The co-ownership's development proposal for its properties was rejected, due to incompatibility with a neighbouring property. As a result, the other participants lost confidence in MPAR. AIMCO and CHC set about to acquire that neighbouring property (without giving MPAR an opportunity to participate), and AIMCO ultimately succeeded.

After acquiring the neighbouring property, AIMCO triggered the shotgun provision under the co-ownership agreement. The limited partnership didn't respond, because the general partner was deadlocked (CHC wanted to accept, MPAR did not); the limited partners also wanted to accept AIMCO's offer. When the limited partnership didn't respond, AIMCO took the position that its shotgun purchase offer was accepted. MPAR, by contrast, purported to exercise the limited partnership's right to acquire the co-owned properties, subject to the condition that the neighbouring property be included in the acquisition.

The core issue was AIMCO's acquisition of the neighbouring property. MPAR argued that the opportunity was in the nature of a "corporate opportunity" and claimed AIMCO and CHC had engaged in oppressive conduct and breached fiduciary duties and contractual obligations to MPAR. As wide-ranging as corporate remedies are, however, MPAR failed to persuade the Ontario Superior Court it was entitled to judicial redress, underlining the importance of understanding the parties' roles and relationships.

First, the court declined to apply the oppression remedy, because MPAR was not a partner, a joint venturer or a co-owner; it was a 50-per-cent shareholder of the general partner, and the general partner's own shareholder agreement expressly permitted the parties to engage in competitive business without bringing opportunities to the other parties. Putting aside the court's conclusion that MPAR was focused solely on its own interests and not those of the limited partners, its role was not capable of attracting the oppression remedy and the conduct involved should not have been contrary to its expectations.

Second, the court concluded that no fiduciary duties were owed. Where AIMCO was concerned, the co-ownership related only to the specific development property, the agreement disclaimed relationships between the parties, there was no relationship of vulnerability or dependence that marks fiduciary relationships and all compounded by the fact MPAR was not the co-owner but simply a shareholder of the general partner. As for CHC, the other shareholder, the court noted that shareholders don't owe fiduciary duties to each other, adding to the fact that the parties weren't acting like fiduciaries but as sophisticated, arm's-length parties acting in their own interests. MPAR's contractual claims fared no better, for similar reasons; MPAR was not a party to the co-ownership agreement, which in any event related to just the one property.

Particularly after *Bhasin v. Hrynew*, there may be a temptation to think corporate remedies are a panacea. But *AIMCO* reinforces the point that each case properly depends on its facts, notwithstanding their complexity.

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The facts in *AIMCO* were complex, and it's tempting to simplify. The problem with simplification is it can lead to reductive fallacies. For example, to hit close to home, consider there are many disputes around the world, often with terrible consequences. Lawyers profit from, and help people participate in, disputes. Therefore, the simplified conclusion would be that, if we were to get rid of lawyers, there would be peace on earth. I knew there was a reason lawyers treasure complexity. CL

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