

In the Court of Appeal of Alberta

Citation: 1719349 Alberta Ltd v 1824766 Alberta Ltd, 2024 ABCA 164

Date: 20240523
Docket: 2301-0107AC
Registry: Calgary

Between:

1719349 Alberta Ltd.

Appellant

- and -

Afshin Devani, Kelly Devani, Michael Cain and Giovanna Cain

Respondents

- and -

1824766 Alberta Ltd. and the Owners of Condominium Plan 1513354

Not Parties to the Appeal

The Court:

**The Honourable Justice Jolaine Antonio
The Honourable Justice Anne Kirker
The Honourable Justice April Grosse**

**Oral Judgment
Delivered from the Bench**

Appeal from the Order of
The Honourable Justice S.M. Bensler
Dated the 12th day of April, 2023
Filed the 16th day of August, 2023
(2023 ABKB 207; Docket: 2101-04454)

**Oral Judgment
Delivered from the Bench**

Kirker, JA (for the Court):

[1] This is an appeal of a discretionary decision denying leave to the appellant, 1719349 Alberta Ltd, to bring a derivative action on behalf of 1824766 Alberta Ltd.

[2] Section 240 of the Alberta *Business Corporations Act*, RSA 2000, c B-9, provides that a court may give permission to a complainant to bring an action in the name and on behalf of a corporation. The chambers judge was satisfied that the requirements under ss. 240(2)(a) and (b) were met; that is, the complainant, 171, had given reasonable notice to the directors of the corporation, 182, and 171 was acting in good faith. However, the chambers judge was not satisfied the proposed action was in the interests of 182. She reasoned that the action would likely be barred by the *Limitations Act*, RSA 2000, c L-12, and further that it was not in 182's interests on a cost benefit analysis. She also held that even if the best interests of the corporation criterion had been satisfied, she would have exercised her discretion to refuse leave for the proposed derivative action because "the pleadings do not demonstrate a wrong to 182 that requires redress."

[3] We see no reviewable error in any of the conclusions reached by the chambers judge.

[4] The appeal is dismissed.

Appeal heard on May 17, 2024

Memorandum filed at Calgary, Alberta
this 23rd day of May, 2024

Kirker J.A.

Appearances:

V.C. Olson
for the Appellant

A.M. Pozzobon
B.A. Larginho
for the Respondents