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Nathan and Voore

Corporate Meetings Law and Practice

This loose leaf service is a guide to the meetings of shareholders and directors in Canada and the legal principles relating to the preparation for and the conduct of any corporate meeting. This publication provides easy access to legal information on problems that could arise before, during or following a meeting. This publication provides national coverage of the law in relation to contested meetings, quorum requirements, voting rights, notice and disclosure requirements, proxies, shareholder proposals and meeting procedures.

What's New in this Update

This release features case commentary updates to the Remedies Table - Breach of Fiduciary Duty by Directors and Officers and adds to the Appendices: the Canadian Coalition on for Good Governance's The Directors' E&S Guidebook, and its Proxy Access Policy; CSA Staff Notice 52-330 Update on CSA Consultation Paper 52-404 Approach to Director and Audit Committee Member Independence; and, CSA Multilateral Staff Notice 58-310, Report on Fourth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions.

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Highlights

- **Remedies Table — Breach of Fiduciary by Directors and Officers — Damages/Equitable Compensation —** The applicant portrayed the acquisition of the Markham property by Greystar as a corporate opportunity that was appropriated by the individual respondents for Greystar's benefit in breach of the fiduciary duties they owed DBG as directors and officers of DBG. Justice Dunphy observed that there could be no question that each of the three DiBattista respondents owed fiduciary duties to DBG including a duty not to appropriate corporate opportunities of DBG. Justice Dunphy had no hesitation in concluding that the Markham property was an opportunity that belonged to DBG. The initial unsolicited sales pitch came in to DBG's offices and to Anthony's DBG email address. Greystar did not then exist. DBG was in the development business and, through Ray, has reiterated on multiple occasions that it was building up a significant cash holding to be in a position to pursue development opportunities. DBG had cash on hand sufficient to purchase the property. The negotiation and closing of the purchase and the great bulk of the financing was accomplished by DBG employees using DBG facilities and DBG cash. There was simply no reason why DBG could not pursue this acquisition and development opportunity. The submission that the "New Opportunities" provisions of the MOA justified their actions was not tenable for several reasons. The directors could not contract out of their statutory duties: OBCA s. 134(3). The MOA did not purport to contract out of new opportunities where DBG was involved by providing 75% of funding. The respondents took no steps to avoid the clear conflict of interest arising from Ray's decision to pursue this venture, showing no sign of even recognizing it as a problem. Ray's evasiveness at the 2016 shareholders meeting and failure to disclose is evidence of bad faith: *Gambin Estate v. Di Battista Gambin Developments Limited*, 2018 CarswellOnt 13727, 2018 ONSC 4905 (Ont. S.C.J.).