



Spring Case Law Update

By David Thiel

While much of the attention in the condominium community over the past many months has been concentrated on the ongoing changes to the condominium legislation in Ontario, the courts continue to release decisions of significance. We will explore two of these recent cases in this article.



Toronto Standard Condominium Corporation No. 1462 v. Dangubic (released January 19, 2018)

This proceeding before the Ontario Superior Court was a motion for summary judgment and for enforcement of the condominium's lien against one of its unit owners, Ms. Dangubic.

The relevant events started when the defendant unit owner was reported to have been using the condominium's party room in a noisy manner in violation of the condominium rules among

other allegations including reports of confrontations with other unit owners.

As a result, the condominium's lawyer wrote to the defendant requiring the defendant's compliance, presumably with respect to breaches of the rules etc. The legal costs incurred were added to the common expenses owing for the unit and a condominium lien was thereafter registered to secure payment.

The court noted that the defendant did not seriously contest the underlying allegations of misconduct as part of this proceeding. Certain facts had been admitted and the amount of the legal costs (\$3,136.32) was not in dispute. This case turned primarily into a dispute concerning the validity of the condominium's lien.

The first argument raised by the defendant was that legal fees incurred by a condominium in dealing with an owner are not validly subject to a condominium lien. The court disagreed and stated that there was 'nothing unusual

about the inclusion of legal fees in the common expenses.'

The defendant then argued that the lien was out of time, as not being registered within three months of default pursuant to the *Condominium Act*, 1998 (the "Act"). The first compliance letter sent by the condominium's lawyer was dated November 24, 2015 and the lien was registered on March 29, 2016.

The condominium argued that it had allocated monthly pre-authorized deductions of common expense payments, thereby rolling the debt forward each month and that the period to register the condominium lien had not expired. The court agreed with the condominium, and referenced some previous case law including *Durham Condominium Corp. No. 56 v. Stryk*.

This court decision is important because it confirms two important principles relating to condominium lien enforcement: (a) that a condominium may lien for legal



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costs relating to compliance warnings and (b) that a condominium is permitted to allocate monthly expenses to the oldest arrears so that the condominium's lien does not expire.

While there is some case law related to both issues, neither of these principles has been subject to extensive judicial scrutiny. This clear decision should be helpful to condominiums when seeking reimbursement of legal costs from owners for compliance matters.

That said, a few caveats should apply:

(a) prior to registering such a condominium lien, the condominium's documents in each case must be reviewed for the basis of lien registration.

(b) it would be preferable out of an abundance of caution to register the condominium lien within the three-month period of the initial default so as not to have to rely upon the allocation argument. After all, if there is a dispute as to payment, in most cases this will be apparent within the first three months and the issue should be addressed sooner rather than later.

(c) keep in mind that the proposed changes to the Act relating to 'chargebacks', which changes are not yet in force, will provide a comprehensive procedure for notifying owners of chargebacks and allowing owners to challenge same.

Metropolitan Toronto Condominium Corporation No. 932 the Lahrkamp (released January 15, 2018)

This proceeding was an application to the Ontario Superior Court by the

condominium essentially to have one of the unit owners, Mr. Lahrkamp, declared to be a vexatious litigant and to restrict his ability to commence court proceedings against the condominium or its representatives in the future.

The court in its decision recounted a long history of various court proceedings commenced by Mr. Lahrkamp against the condominium, dating back to at least 2007. By mid 2008, the respondent had commenced five small claims court actions seeking documents from the condominium. Another proceeding was started in 2009, with applications to vary the order made in that proceeding or for related relief lasting into 2016. Three more actions were commenced by the respondent in 2013, 2014 and 2015.

In 2017, Prattas DJ hearing the 2013 to 2015 actions characterized the court proceedings as a 'long, tortuous, labyrinthine and costly litigation saga'. These cases were heard over the course of 12 days. Ultimately, in 2017, Prattas DJ made a significant costs award of \$19,000 plus HST against the respondent due to the unreasonable behaviour of Mr. Lahrkamp. (The condominium was referenced in the case as having actual costs in excess of \$158,000.)

The court in the current application reviewed the various case law and significant requirements that must be met in order to curtail an individual's rights to commence litigation and decided that Mr. Lahrkamp's behaviour was serious enough to warrant

such an order.

The court explained its decision in part to the effect that (a) Mr. Lahrkamp's proceedings relating to condominium governance are already addressed in the Act whereby owners elect a board each year and have other rights such as access to audited financial statements, budgets and the ability to ask questions of the board, (b) the court's failure to intervene may discourage responsible individuals from running for the board and (c) the other owners are forced to devote time and expense to addressing Mr. Lahrkamp's actions.

It was accordingly ordered that Mr. Lahrkamp is prohibited from commencing any proceeding in any court against the condominium or its representatives except with leave of a judge of the Superior Court of Justice.

This case is important as one of the only reported cases of a condominium owner being restrained from commencing legal proceedings against a condominium. This decision is a valuable precedent for condominium boards in dealing with owners who harass condominiums through the commencement of unreasonable (both in nature and frequency) court proceedings. ■

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