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CMRAO Complaints: Trust the Process

Mistakes are an inevitable fact of life. While proper care and diligence should be taken at all times to avoid mistakes, they will occur. Not all mistakes, however, result in prejudice that warrants legal or disciplinary action.

An Honest Mistake

The recent decision in *Tharani Holdings Inc. v. Metro. Toronto Condo. Corp. No. 812*, 2021 ONSC 1125 (“Tharani”) illustrates that Courts recognize that mistakes can and will happen but don’t always merit negative repercussions.

Tharani is part of an ongoing saga between a unit owner and a condominium corporation. The relationship and disputes between the unit owners and corporation are best summarized by the Court’s overview of the case “The relief sought in this Application, and the grounds on which that request is based, are almost impossible to summarize ... The entire Application is a lengthy list of what appear to be formalistic errors made by the Condo Corp board that amount to little in substance.”

To avoid going over the long history in Tharani, a single example illustrates

the difference between a prejudicial mistake and a simple mistake that, while it cannot be condoned, does not result in negative repercussions. The Court found that the property manager used the corporation’s reserve fund to pay the water bill in the past.

As we should all be aware, this is clearly improper use of the reserve fund. However, the Court found that this was an “honest” mistake and that there was no real remedy to be imposed as the funds were used for the corporation’s needs. It characterized this use of the reserve fund as an administrative error that should not be repeated but found that it was not a matter that required judicial intervention.

The Court in Tharani noted that there were various technical breaches of the Act but focused on the question of whether the applicant unit owners actually suffered any prejudice. The

Court was ultimately critical of the unit owner’s failure to recognize any difference between a non-substantive technical breach of the *Condominium Act, 1998* and prejudicial conduct. The application was dismissed in its entirety, with no costs awarded to either party.

While the example of using a reserve fund to pay water bills is, in our view, an extreme example, Tharani illustrates that when mistakes happen, negative repercussions must be based on an actual loss or harm. In other words, one is not to be punished simply for making a mistake.

Reasonable Knowledge, Skill, Judgment and Competence

Section 5 of O. Reg 3/18 under the *Condominium Management Services Act, 2015* (“CMSA”) provides that “in providing condominium management services, a licensee shall

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provide conscientious, courteous and responsive service and demonstrate reasonable knowledge, skill, judgment and competence.”

The CMSA does not require a standard of perfection. The question of what constitutes “reasonable knowledge, skill, judgment and competence” is obviously open to interpretation and will likely be defined further as more decisions are made by the Condominium Management Regulatory Authority of Ontario (the “CMRAO”).

Vindictive Complaints

With the introduction of the Condominium Authority Tribunal (the “CAT”), it has become clear that some disputes between unit owners and condominium corporations have evolved into CMRAO complaints. The CAT has published a number of decisions where it has been reported that unit owners have not only brought an application to the CAT but have also made CMRAO complaints against the condominium manager.

In some instances, unit owners have made complaints against condominium managers in response to a decision or outcome that is unfavourable to the unit owner on matters outside the control of the condominium manager. For example, complaints may be lodged in response to a condominium corporation refusing to provide access to particular records specific to units or owners, according to the *Condominium Act, 1998*. In other instances, unit owners have brought CMRAO complaints merely to punish the condominium manager. In turn, condominium managers must spend time responding to the complaint no matter if such a complaint is without merit. This can be a frustrating process, especially if the same unit owner brings multiple complaints against the same condominium manager.

Condominium lawyers are familiar with this process. It is not atypical for condominium unit owners to make complaints against lawyers to the Law Society of Ontario. These complaints can deal with a range of issues pertaining to the conduct of lawyers, including issues relating to service, ethics or honesty, communications, and rude and discriminatory behaviour, to name a few. The complaints are investigated by the Law Society (similar

to the CMRAO for condominium managers), and in some circumstances, lawyers are asked to respond orally or in writing to such complaints.

Trust the Process

These mechanisms are in place to ensure that condominium managers and lawyers are held to a particular standard. The end result of such checks and balances should result in a better condominium community. However, the standard is not perfection. Condo-

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minium managers and lawyers will make mistakes throughout their careers. That said, a mistake in and of itself does not automatically result in prejudice that warrants legal or disciplinary action.

While a complaint to the CMRAO is an unpleasant experience, trust should be placed in the complaints process even when a complaint has been made without merit. A complaint may cause anxiety (and even ruin a day or rest of the week), but condominium managers have to remain confident that the process is fair and just.

To better understand the types of actions that should be taken based on the nature of the complaints and the issues that are raised, the CMRAO will be establishing a formal policy. This action item stems from the Auditor General of Ontario’s 2020 report, which included a value-for-money audit regarding condominium oversight. Specifically, the CMRAO will be identifying the types of actions that should be taken in response to specific types of complaints.

We also understand that the CMRAO may be developing a plan to carry out inspections of condominium managers and companies using a risk-based framework. These inspections will be proactive (i.e. not in response to a complaint) and attempt to address areas of non-compliance and other risk factors.

One of the most important factors when addressing the enhancement of the complaints handling and resolu-

tion process or proactive inspections is to ensure that condominium managers and companies have a clear and cogent understanding of what is right and wrong. By making some of this process public, condominium managers will better understand how the CMRAO will treat different types of complaints.

Addressing a mistake that has been made is a trying process. Aside from learning from that mistake which is how we all grow and develop as professionals

- a key step is to determine the possible impacts and repercussions of that mistake. Doing so will help to address potential repercussions proactively and will help to place the mistake in context because nobody is perfect. ■

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