Case Law Summaries for Spring

By Greg Marley, LLB

Metropolitan Toronto Condominium Corporation No. 723 v. Reino, 2018 OREG para 59,274

Mr. Reino purchased his unit in 2013 from his mother who had owned the unit since 2004. Both purchasers received a 'clean' Status Certificate from the corporation when they purchased the unit. In 2016, Mr. Reino decided to sell the unit and asked for a Status Certificate. When it arrived it stated that he was in breach for unauthorized alterations to the layout of the unit. Neither he nor his mother claimed to have made any changes and he commenced an Application seeking a clean Status Certificate. The Application was successful and the Court found that section 76 of the *Condominium Act* bound the corporation to the previous clean Status Certificates. The corporation appealed.

The appeal was successful. The Court of Appeal found that although Mr. Rieno is bound by the clean Status Certificate issued to him in 2013 the corporation is not estopped from issuing anything but a clean Status Certificate as a result.

The Court notes that if a corporation becomes aware after issuing a clean Status Certificate, of a circumstance that has to be disclosed, it must include this information when it next issues a Certificate. The Court noted that if the corporation has mistakenly issued a clean Certificate to Mr. Reino, he has a remedy of suing the corporation for any diminution of value as a result of the improper disclosure in his 2013 Certificate.

This decision does not specify whether the Status Certificate has the now almost standard wording that notes that the corporation has not conducted an inspection of the unit and that there may be unauthorized changes to the unit which are not reflected in the Certificate. It will be interesting to see if a Court is asked to decide if that clause allows the corporation to escape any possible liability in a situation such as Mr. Reino's if he were to choose to sue for loss of value.

Dewan v. Carleton Condominium Corporation No. 396 [2018] O.J. No. 1072

This decision is the appeal of a decision following a thirty-five day trial. The Appellants were the majority owners at the corporation and had been found to have acted oppressively against the minority owners and also found some of the Appellants personally liable for

the costs of the minority owners. These findings were appealed.

The Court of Appeal dismisses the appeals rather quickly but does an interesting analysis of director's personal liability in oppression remedy cases. The Court notes that a two-pronged test must be followed. First, the oppressive conduct must be properly attributable to the director because of his or her implication in the oppression. Second, imposing personal liability must fit in all the circumstances (a detailed list is found in the cited decision).

Although the Court relies on an oppression action from the Business Corporations Act, the Court applies that reasoning to the *Condominium Act* and finds that as the *Condominium Act* does not indicate when it would be proper to hold a director personally liable for oppression, guidance can be found in that case.

A board member is generally awarded a high level of protection from the Courts as it is recognized that board members are volunteers trying to do the best for the corporation. Any guidance as to the criteria that will be applied to find personal liability against a director is welcome.

Toronto Standard Condominium Corporation No. 2051 v. Georgian Clairlea Inc. 2019 ONCA 43

The Declarant revised the Disclosure Materials mid-way through the sales process to require the corporation to purchase back via a Vendor Take Back (VTB) Mortgage HVAC equipment and unsold parking and storage lockers. The Declarant controlled board of directors signed the VTBs for approximately $3,300,000 at 10% interest per annum.

The corporation brought a summary judgement motion for oppression and argued that the disclosure materials infringed section 74 disclosure requirements of the *Condominium Act*. The Motion Judge agreed and ordered the total principal amount reduced to approximately $725,000 with interest as per the terms of the VTB.

The Declarant had filed for bankruptcy and the appeal was brought by GPC whom the Declarant had assigned the VTB mortgages to.

The Court goes into an analysis of the term "material change" used in section 74(1) of the Act. The Judge notes that "purchasers are entitled to know what the terms of the deal are". In her opinion, the disclosure materials were not done in simple, readable language and she found that the disclosure was insufficient.

One practice of developers that was addressed in the decision is that of not including any costs that do not start until after the first year of the Corporation in the budget. In this case, neither VTB had any payment provisions until after the first-year budget statement that was presented in the Disclosure Materials and no mention of the upcoming payments was made.

The Court of Appeal agreed with the Motion Judge that the Declarant-controlled board had acted oppressively and unfairly saddled the owners with the VTB for items they reasonably thought they had already purchased.

This case is important for new buildings especially where the Declarant-controlled board has bound the corporation to VTBs for items. Please be sure to consult with your counsel to see if these are a proper obligation of the corporation.

ACMO 2000

ACMO 2000 Certification Program

Report as of March 6, 2019

In 2013, we began including updates on ACMO 2000 certifications awarded to companies that have successfully completed the certification process as well as the required compliance audits.

The mission of the ACMO 2000 Certification Program is to equip condominium management firms to provide quality service by:

- developing a series of core operational standards and procedures;
- certifying those firms who meet the standards; and
- providing a structure for ongoing measurement of the firm's performance.

ACMO 2000 Certification

Capitalink Property Management Ltd.
Feherty Property Management Inc.
JTB Management Group Inc.
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ACMO 2000 Compliance Audit

360 Community Management Ltd.
Berkley Property Management Inc.
Connium Management Inc.
M.F. Property Management Ltd.

Toronto Standard Condominium Corporation No. 2471 v. Tarion Warranty Corporation 2019 ONLAT ONHWPA 11500

TSCC 2471 is a 434-unit condominium highrise which had submitted first and second year warranty claims to Tarion. Omni, the Declarant, did not repair or resolve the claims within the repair period. Under the Tarion regulations, the Condominium has a certain time period within which to request conciliation to enforce the warranty. If it fails to do so, the claim is deemed to be withdrawn. TSCC 2471 failed to meet the deadline and the claims were withdrawn.

The regulations have a provision which allows for the time to be extended in "extraordinary circumstances". The Corporation claimed that there were extraordinary circumstances and asked for extra time. Tarion refused and the Corporation appealed. The Declarant did not participate in the appeal.

The Corporation was successfully able to argue that there was no single factor that caused the missed deadline, but rather that it was as 'perfect storm' of a number of unusual factors that lead to the delay.

There were a number of factors that were taken into account by the Tribunal such as the new property manager had never dealt with Tarion claims before, communication issues between the manager and the engineer, the manager was dealing with the recent death of his spouse, an 'unresponsive' Board of Directors and other ongoing constructions issues at the property.

The Tribunal finds that the term 'extraordinary circumstances' is fact driven and contextual. In this case, when viewed in their totality, the Tribunal found exceptional circumstances and extended the timeline for filing.

The takeaway from this case is that there may be recourse if something happens and a deadline is missed. Please be sure to give your lawyer the full picture if this situation ever arises at your property. ■

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