



Decisions From the Courts

A Cautionary Tale for Do-it-Yourselfers, and Status Certificate Errors – Who’s Responsible?

York Condominium Corporation No. 78 v. Stein (2015 ONSC 1837) - Decision of March 8, 2016

Renovation projects in residential condominium units are becoming commonplace. This is due, in part, to aging buildings and changing demographics. Renovations may update an older unit or alter the layout of a unit to suit a new owner. Construction work is, however, inherently risky. Condominium corporations are sometimes required to intervene to eliminate safety hazards and ensure work is done properly. In YCC 78 v. Stein, the Court clarifies when and to what extent condominium corporations are able to step in and complete renovation work that creates a safety hazard or is left unfinished.

In YCC 78 v. Stein, the respondent unit owner’s renovation project first came to light when she notified her condominium corporation of exterior water penetration into her unit. Upon investigating the complaint, the corporation discovered that for the previous three years, the unit owner had carried out extensive, significant renovations in the unit. Her renovations were described as “major construction activity”. The owner had made material changes to the common elements, including removing

plaster and insulation, removing and reconstructing electrical and plumbing connections, removing the parquet floor to expose the concrete floor slab, and tampering with the radiator heating system. The owner did not obtain the condominium corporation’s consent to alter the common elements.

The owner had also completely gutted and re-wired the unit, doing most or all electrical work herself. She did not have her electrical work inspected by the Electrical Safety Authority.

The unit had been in a state of disrepair, without a functioning bathroom or kitchen, for 18 months. The condominium corporation wanted to take over the renovation project, complete the work, and charge all of the costs against the owner as common expenses. The corporation brought an application in the Superior Court for an order permitting it to carry out “all necessary repairs and/or maintenance to the unit”, which was a sweeping request.

The Decision

The Judge held that the condominium corporation was entitled to a compliance order because the owner had altered the common elements, without approval from the City or

Electrical Authority, creating a safety hazard. The Judge granted the condominium corporation an order permitting it to restore the common elements to their original condition at the owner’s cost. The condominium corporation was permitted to charge its costs against the unit as a common expense.

The work that the condominium corporation was permitted to do was limited to the common elements. The Judge refused to permit the condominium corporation to repair and restore the unit. The judge held that the sweeping order requested by the condominium corporation would effectively grant the condominium a license to bring the unit into a state of repair to the “corporation’s liking”, which was not acceptable.

The Judge did, however, permit the corporation to inspect the current state of the unit and, if the state of repair posed a risk of damaging property or causing injury to an individual, the condominium was invited to return to court to ask for a further compliance order. The owner was also required to pay the costs of the inspection.

Finally, the Judge ordered the owner to pay the corporation’s legal costs in the amount of \$25,000.

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Mediation/Arbitration as a Defence

The unit owner tried to use the Condominium Act's mediation/arbitration provisions as a defence by taking the position that the corporation was precluded from proceeding with a court application until the matter had been to mediation and arbitration.

The Judge found that the mediation/arbitration provisions of the Condominium Act did not apply in these circumstances because the owner was in breach of the Condominium Act. Both the unauthorized alterations to the common elements, which contravened section 98 of the Act, and the uninspected electrical work, which created safety risks, permitted the condominium corporation to bring the matter directly to court. Mediation/arbitration are mandatory only for "lesser disputes" where an owner is alleged to be in breach of the Declaration, By-laws, or Rules, but not the Act itself.

The Condominium Corporation was not Permitted to Complete the Renovation Work

The condominium corporation asked for an order permitting it to step in and complete the renovations. Even though the unit had been in a perpetual state of disrepair for years, the Judge refused to let the condominium corporation finish the renovation work unless the state of disrepair posed a safety risk.

Section 92(3) of the Condominium Act permits a condominium corporation to carry out construction work to a unit in certain circumstances where an owner fails to maintain his or her unit. Even though the unit had not had a functioning kitchen or bathroom for 18 months, the Judge did not fault the owner for the delays in completing her renovations. He concluded that the perpetual state of disrepair was not unlike most renovation projects.

It appears that owners can take as much time as they like to complete their renovation projects as long as they do not create safety risks.

Author's Comments

This case highlights a few considerations applicable to in-suite renovation projects:

- alterations to the common elements must be approved by the condominium corporation

and should be the subject of a Section 98 Agreement registered on title to the unit

- electrical work should be inspected or performed by a certified electrician
- owners can do renovation work on their own schedule as long as delays do not pose a safety risk or disturb other residents

Metropolitan Condominium Corporation No. 673 v. St. George Property Management Inc. (2016 ONSC 1148) - Decision of February 3, 2016

This case highlights the importance of preparing accurate status certificates and

illustrates the consequences that may befall a management company that fails to do so.

The defendant management company was retained to manage the plaintiff condominium corporation. One of the defendant's responsibilities was to prepare status certificates. The management agreement stated that if a status certificate contained an error, the property management company would be liable for any costs incurred as a result of the error.

The management company prepared a status certificate which turned out to be



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generally accurate as to the state of the corporation's finances. The status certificate improperly omitted information about an upcoming project that could have resulted in a special assessment. The special assessment was levied but not collected, and the omission did not cause the purchaser to incur unexpected costs. The omission did however cause the purchaser to pursue a lawsuit against the condominium corporation which cost the corporation \$97,182.68. In the end, the management company was ordered to reimburse \$97,182.68 to the condominium corporation and was ordered to pay the condominium corporation a further \$42,000 in legal costs.

The Deficient Status Certificate

MTCC 673 is a commercial condominium corporation. In 2011 it received \$745,232.41 from the TTC due to an expropriation. At about the same time, MTCC 673's Board of Directors learned that all of the roofs needed to be replaced at an estimated cost of \$1.2 million. MTCC 673's Board of Directors discussed applying the TTC money to the roof replacement project.

On October 5, 2011, the property management company issued a status certificate for the pending sale of Unit 13. The status certificate did not mention the TTC money or the impending roof replacement project.

On November 29, 2011, MTCC 673's Board of Directors issued a \$1 million special assessment to pay for the roof replacement. \$750,000 was to be paid from the TTC funds and \$250,000 was to be paid by the owners. The special assessment was subsequently cancelled because the Board managed to replace the roofs for \$745,232.41, which was the exact amount received from the TTC.

The purchaser of Unit 13 commenced a lawsuit against MTCC 673, claiming that MTCC 673's status certificate misrepresented the corporation's financial status. The purchaser wanted to keep its share of TTC funds without having to contribute to the roof replacement project. The Judge dismissed the purchaser's application because the purchaser had not been financially impacted in any way by the alleged deficiencies on the status certificate.

The purchaser appealed. The divisional court upheld the lower court's refusal to

award the purchaser monetary damages. The divisional court did reverse the Trial Judge on one issue: it made a finding that the status certificate had been deficient. The divisional court granted the purchaser its costs of the appeal in the amount of \$15,000 and ordered the parties to bear their own costs of the lower court hearing. The purchaser of Unit 13 was not awarded any compensation as a result of the deficient status certificate. The purchaser's lawsuit caused MTCC 673 to incur \$97,182.68 in costs.

The Condominium Corporation's Lawsuit against its Management Company

MTCC 673's Board of Directors wanted its management company to pay for the lawsuit that arose out of the deficient status certificate. The management agreement stated that the management company shall "indemnify and save the Corporation completely free and harmless from any and all damages" caused by its negligence. MTCC 673 commenced a lawsuit against

its management company to recover the \$97,182.68 it spent on the "status certificate lawsuit" by the purchaser of Unit 13.

The Judge agreed that the management company was liable to reimburse MTCC 673 for the \$97,182.68 incurred as a result of the deficient status certificate. In addition, the management company was ordered to pay MTCC 673 a further \$42,000 in legal costs that MTCC 673 incurred in its lawsuit against the management company. The Judge hearing the matter criticised the management company for refusing to concede that it was responsible for the mistake and in resolutely refusing to honour its agreement to indemnify the condominium corporation, as required by the terms of the management agreement.

Author's Comments

This case highlights the importance of having accurate status certificates. Status certificates must include all statutorily required information, even information which seems irrelevant and will not affect the purchaser. CV



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