



Condos can recover reasonable expenses incurred to collect condo fees arrears

By Rod Escayola on October 30, 2010

Condo fees are the lifeblood of condominiums. One owner's failure to pay his share of common expenses causes suffering to all of the other owners in more than one way. First, the innocent owners have to bear the financial burden of the delinquent owner who benefits from services without paying his share. As importantly, the steps required to collect unpaid condo fees can result in important legal fees for the corporation. If the corporation is unable to collect the costs incurred, this costs is imposed on the innocent owners.

A recent Ontario case involved a unit owner who had fallen in significant arrears. The corporation registered a lien against the unit and eventually commenced an action for possession of the unit.



As is often the case, the owner brought a Small Claims action against the corporation, claiming wrongful collection of condo fees. The arrears eventually rose to \$6,532 and the interest on such arrears to \$4,413, at a rate of 18% as authorized by the condo's Bylaws.

The condo corporation was successful against the defaulting owner. However, legal fees incurred by the corporation for the Small Claims matter were in excess of \$22,000. Legal fees incurred by the corporation for the lien action were nearly \$56,000.

The Condominium Act provides that

if an owner defaults in the obligation to contribute to the common expenses, the corporation has a lien against the owner's unit and its appurtenant common interest for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount.

In exercising his discretion as to what constitute "reasonable expenses", the Judge considered the proportionality between the expense incurred and the amounts at stake; the amounts an unsuccessful party could reasonably expect to pay and the degree of complexity of the matter. He ordered the delinquent owner to pay, in addition to the arrears and the interest, the sum of \$4,619 in legal fees for the small claims matter and the sum of \$20,387 for the liens matter.

The lessons to take away from this tale are numerous. The ability for a corporation to protect the other owners against a delinquent owner by placing a lien on the property is an extraordinary remedy to the benefit of all owners. Most property managers and board members are aware of the importance of registering a lien within the three month period.



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However, although it seems clear that as long as the interest rate is established by by-law they can be charged at the specified rate, all costs incurred by the corporation in its collection may not be recoverable. It becomes important, more than ever, for property managers to use every available tool to nip things in the bud before matters escalate and substantial legal fees are incurred.

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