

# Court of Queen's Bench of Alberta

Citation: 1597130 Alberta Ltd v Condominium Corporation No 1023241, 2015 ABQB 698

Date: 20151103  
Docket: 1303 03946  
Registry: Edmonton

2015 ABQB 698 (CanLII)

Between:

**1597130 Alberta Ltd.**

Plaintiff

- and -

**Condominium Corporation No. 1023241**

Defendant

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**Reasons for Judgment  
of  
L. A. Smart, Master in Chambers**

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## Introduction

[1] This matter arises out of the development of a 24 unit condominium complex in Hinton, Alberta which has gone very wrong. The primary issue that I've been asked to address is the basis upon which 1597130 Alberta Ltd (Applicant) in its capacity as the court appointed Administrator of Condominium Corporation No. 1023241 (Condo Corp.) may assess the Owners the expenses incurred and to be incurred pursuant to the Order of appointment.

## Background

[2] The original developer Anago Enterprises Ltd commenced construction and while owner sold units 19 and 22. On March 18, 2011 the Applicant became registered owner of all of the other units pursuant to an Order Confirming Sale. Thereafter, the Applicants units were sold to 1520786 Alberta Ltd through an agreement of sale that closed September 1, 2011. 1520786 proceeded to take steps to complete the development and while owner sold units 11, 12, 15 and 17. An Occupancy Permit was granted for the property on March 30, 2012 but following an occupancy inspection was subsequently revoked in correspondence from Superior Safety Codes Inc. on July 23, 2012 and pursuant to an Order under the *Safety Codes Act* of the same date. No steps were taken to complete the necessary work to re-establish Occupancy. Caplink the administrator of the Applicant's mortgage obtained a Project Budget to determine the work necessary to obtain occupancy and other minor work necessary to complete construction of the remaining unsold units. That budget estimated a cost of \$304,575.

[3] Notice was given that 1520786 had effectively abandoned the development advising that there was no insurance on it and that utility services may be discontinued. On March 18, 2013 the Applicant was appointed Administrator of the Condo Corp. by Order of this Court pursuant to the provisions of the *Condominium Property Act*, RSA 2000, c.C-22. It was anticipated that the work would be completed in a timely fashion although the Order provided for extension if necessary on or before June 30, 2013. In retrospect it would have been desirable to provide for regular reporting to the Owners but it did not.

[4] As work was completed and deficiencies rectified ongoing inspections disclosed further issues resulting in the extension of the Order four additional times, the last being on July 8, 2015. The Administrator has reported that the costs incurred to August 8, 2015 are \$1,410,422.25. Furthermore, based on an inspection on December 8, 2014 additional fire safety deficiencies must be rectified. The Administrator now estimates that the total project costs will be \$2,815,160 to obtain Occupancy and have all matters in order to provide for a turnover to the Owners.

## The Issue

[5] The Applicant/Administrator owns 16 of the 22 residential units. It also owns Unit 1 which is described in the Condominium Plan as "assigned by the developer for future re-division" and Unit 2 being common property surrounding the building currently under construction. Despite holding legal title to Unit 1 and Unit 2 the Applicant says that it has always considered these units as common property of the subject condominium. Unit 1 has an assigned unit factor of 4232 of 10,000 and Unit 2, one unit factor. No residential unit is located on or within Unit 1 and none of the administrative or construction expenses incurred to date, or budgeted to be spent on completion, have been, or will be, attributable to Unit 1.

[6] In the light of the foregoing, the Administrator proposes to assess each of the residential condominium units based on their assigned unit factors over the unit factors assigned to those residential units being 5767 unit factors. The owners of Units 11, 12, 15, 19 and 20 (Individual Owners) take the position that any assessment must include the unit factors assigned to all units resulting in the Applicant being proportionally responsible for the 4233 unit factors attributed to Units 1 and 2 in addition to its residential units.

## Discussion

[7] The *Condominium Property Act* provides for the appointment of an administrator under section 58 that reads as follows:

(4) an administrator has, to the exclusion of the board and the corporation, those powers and duties of the corporation that the Court orders.

[8] Paragraph 6 of the Order appointing the Applicant as Administrator provides as follows:

(6) The remuneration of, and expenses incurred by, the Applicant, including expenses incurred to inspect the Premises or to determine the costs of obtaining occupancy, whether incurred before or after the date of this Order, and all professional fees, and legal fees and disbursements on a solicitor-client basis, shall be administrative expenses of the Condominium Corporation, and the Condominium Corporation shall indemnify the Applicant for all expenditures made, or liabilities incurred, in carrying out the powers authorized by this Order.

[9] The Order provides that the Administrator is to be indemnified by the Condo Corp. and it now in effect seeks to recover funds expended and to be expended pursuant to that indemnity. In order for the Condo Corp. to raise funds to satisfy the indemnity it must make an assessment against the Owners. Although the Order does not expressly provide for an assessment to be levied by the Administrator, it is implicitly a necessary requisite to give effect to the obligation to indemnify.

[10] Section 39 (1) of the *Condominium Property Act* provides that a condominium corporation has the power to raise amounts by levying contributions on the owners in proportion to the unit factors of the owners perspective units, or if provided for in the bylaws, on a basis other than in proportion to the unit factors of the owners' respective units. The Bylaws of this Condo Corp. are those set out in Appendix 1 of the *Act*. Those Bylaws do not provide an alternative basis upon which to assess contributions.

[11] The Applicant argues that levying contributions in that manner creates an unfair and unjust result as it is the residential units that solely benefit from the work completed and to be completed. *Condominium Plan No. 8222909 v Francis*, 2003 ABCA 234 addressed the capacity of condominium corporations to levy assessments other than by way of unit factors. The capacity issue was addressed by the amendments to the Act which now allows for assessments to be levied on another basis, however, absent an authorizing bylaw, the conclusion that the scheme of the *Act* does not permit a court to impose what it considers to be fair on a case-by-case basis remains sound. Although the role of the Administrator is analogous to that of a court appointed Receiver the power and capacity of the Administrator is governed by the Condominium Property Act. The language set out in s. 58 (4) allows the court to give the administrator the powers and duties of the Corporation and is not as broad as the wide discretion the court may have, for example, when appointing and empowering a receiver under the Judicature Act. To direct an assessment on a basis other than unit factors would in effect be an amendment to the Bylaws. The *Act* permits amendments by special resolution at a duly convened meeting of the Owners.

## Conclusion

[12] Despite my inclination to agree that it is unfair in this case that the assessment be based on unit factors that method of assessment is nonetheless the legally correct one. Recognizing

that my conclusion may practically stall the work needed to rectify the deficiencies and finalize construction, it may be desirable to convene a meeting of the Owners to consider alternatives for resolution of this impasse. Accordingly, in the absence of a Board of Directors, I authorize the Administrator to convene a meeting of the Owners for such a purpose and for consideration of such resolutions including special resolutions as may be presented.

**Dated** at the City of Edmonton, Alberta this 3<sup>rd</sup> day of November, 2015.

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**L. A. Smart**  
**M.C.C.Q.B.A.**

**Appearances:**

Ronald Haggett  
Kennedy Agrios LLP  
for the Plaintiff

Patty Ko  
Bishop & McKenzie LLP  
for three unit holders

Sigurd Delblanc  
Bryan & Company  
for two unit holders