

DECISION AND ORDER

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Adam v. Halifax County Condominium Corporation No. 267, 2009 NSSM 32

BETWEEN:

Name: GANIM ADAM

- CLAIMANT

Name: HALIFAX COUNTY CONDOMINIUM CORPORATION NO. 267

- DEFENDANT

DATE OF HEARING: June 30, 2009.

Revised Decision: The text of the original decision has been revised to remove addresses of the parties on August 12, 2009.

DECISION

- [1] Ganim Adam owns a unit in a 76 unit complex, Halifax County Condominium Corporation No. 267. The Condominium Corporation instituted a levy on each owner payable in three equal monthly instalments beginning June 15th, 2008. Notice was sent to Mr. Adam, but then he was out of the country through the summer and he says the levy only came to his attention upon his return. In early September, he wrote the Corporation pleading for time to pay because he had found himself without the funds to pay immediately. The Corporation turned him down flat. On September 25th, 2008, a lawyer wrote Mr. Adam and his wife on behalf of the Corporation and demanded payment. The letter said he was \$5,043.82 in arrears, pointed out that the Corporation has a lien on his unit in priority to the mortgage, and said;

“Further, the Condominium Corporation has a right to add our fees and disbursements to the amount owing. Therefore, the total amount owing is increased by \$350.00 being our initial fees and disbursements for an amount of \$5,393.82 including applicable taxes.”

- [2] Mr. Adam went to the bank, obtained a loan through a credit card at the credit card interest rate and on October 11, 2008 paid the amount of the levy. The Corporation, however, persisted

demanding payment of \$56.32 in interest on the late payment of the levy and payment of the legal fees of \$350.00. Mr. Adam wrote back denying he owed the Corporation anything. The Corporation persisted. On March 16th, its lawyer wrote Mr. Adam's mortgagee pointing out the Condominium Corporation's lien and requesting payment of \$756.32, that is the interest, the \$350.00 for the legal fees on the demand letter, and a further \$350.00 for the lawyer's "collection" of the account. On April 6th, the lawyer wrote the mortgagee again, in capital letters saying:

AS PER THE ENCLOSED STATEMENT, OUTSTANDING ARREARS AS OF MARCH 30, 2009, ARE \$756.32. PLEASE FORWARD THIS AMOUNT TO OUR OFFICE PRIOR TO APRIL 24, 2009, TO AVOID FURTHER ACTION IN THIS MATTER.

- [3] The mortgagee obediently forwarded \$1,162.61 to the lawyer, who forwarded the whole amount, which exceeded his demand by over \$400.00, to the Corporation.
- [4] Mr. Adam claims that the Corporation has discriminated against him because of his race. He says that its refusal to consider his circumstances and its interference with his mortgagee are, among other acts, evidence of this discrimination. He also claims that the Corporation defamed him through its interference with his mortgagee by saying that he did not pay his debts. Mr. Adam may indeed be able to make a cogent argument in support of his claim of discrimination and defamation, but in my opinion these issues cannot be addressed within the jurisdiction of the Small Claims Court. In my opinion, I have no jurisdiction over his \$3,700.00 claim for the damage done to his reputation and credit with his mortgagee.
- [5] I have no doubt that he is, however, entitled to his order for the payment of the legal fees the mortgagee has debited his tax account. The Corporation justifies its action under Article IX, section 15(b) of the by-laws. It provides as follows:
- In addition to any remedies or liens provided by the *Act*, if any owner is in default in payment of an assessment levied against him for a period of fifteen (15) days, the Board may bring legal action for and on behalf of the Corporation to enforce collection thereof by way of legal action, lien, and /or other means and there shall be added to any amount found due all costs, including all legal fees, disbursements and applicable taxes, of such action including costs as between solicitor and client.
- [6] In this case, the Corporation's lawyer wrote demand letters. Consulting a lawyer and having the lawyer write letters is not, in my opinion, legal action. I construe 'legal action' in the context of the provision to mean some legal proceeding, some step in a process towards a judicial resolution of a claim. Furthermore, the amount is to be 'found due', which again presupposes an adjudication.
- [7] The Corporation, in my opinion, has been arbitrary and high handed in interfering with Mr. Adam's contractual relations with his mortgagee and I find no authority for the Corporation to

do so. The Corporation has, contrary to the notions of due process that underlie our traditions of justice, simply taken it upon itself without notice or a hearing, to go to a mortgagee and influence the mortgagee to reach into Mr. Adam's pocket and extract payment. I would expect the authority to exert such arbitrary power do so to be very clear in the *Act*, declaration or by-laws, especially since the declaration and by-laws are not negotiable by a buyer and must be taken as they are if the property is to be purchased.

- [8] Due process tends to correct error. The claim was, as I have said, ill founded. The amount extracted was wrong. The amount extracted was for legal fees, not condominium arrears. The amount charged as legal fees seems high. A manager for the Corporation acknowledged that seven demand letters such as Mr. Adam received were sent out to Corporation members and each of them was charged the \$350.00. That appears to be \$2,000.00 in legal fees for seven standard form letters. Mr. Adam had no opportunity to challenge the reasonableness of the fees charged him.
- [9] The Corporation is fully secured. Its levy forms a lien on the unit. It is entitled to charge interest on the amount due. Its lien stands in priority even to the first mortgagee. The Corporation would provide an estoppel certificate on a refinancing or a sale stating the debt and its payment will be a precondition to either one. I am at a loss to understand why the Corporation would bully a member of its own community as it has Mr. Adam. The Small Claims Court process is open to the Corporation, among others, for the final resolution of disputes with Corporation members.
- [10] Again, I find no authority in law or in justice to demand payment of Corporation debt through the mortgagee of the owner.
- [11] The Corporation, as I said, is entitled to interest on arrears. Mr. Adam, however, is entitled to the reimbursement of legal fees in the amount of \$700.00, and his costs in the amount of \$89.68.

ORDER

- [12] I order Halifax Condominium Corporation No. 267 to pay the sum of \$789.68 to Ganim Adam.

Dated at Halifax, Nova Scotia
this 14th day of July, 2009.

J. WALTER THOMPSON, Q.C.
ADJUDICATOR

Original Court File

Copy Claimants(s)
Copy Defendant(s)