

Case Name:

**Associated Mechanical Trades Inc. v. Kurzbauer**

**Between**  
**Associated Mechanical Trades Incorporated, Lien**  
**Claimant, and**  
**Ruth Ann Kurzbauer, Owner/Applicant**

[2008] O.J. No. 4688

Court File No. 08-CV-366142

Ontario Superior Court of Justice

**Master J. Polika**

Heard: November 14, 2008.

Judgment: November 14, 2008.

(9 paras.)

**Counsel:**

M. Katzman, for the Owner/Applicant.

S.H. Starkman, for the Lien Claimant.

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**1 MASTER J. POLIKA:**-- Leave is granted to bring this motion on short notice. The issue here is whether an individual unit holder can vacate a claim for lien and on what terms in relation to a lien registered against all units in a **condominium** where work was done to improve the common elements of the **condominium**. I have heard the submissions of counsel.

**2** The lien claimant wants payment in of the whole amount of the claim for lien plus 25% for costs on the basis that each unit holder has an undivided interest in the common elements. The argument in my view is not tenable.

**3** Section 14(1) of the *Condominium Act* provides that a unit holder may discharge the portion of an encumbrance that is applicable to the owner's unit and common interests by paying a portion of the amount attributable to the owner's common interest as specified in the declaration. Section 44(2) of the *Construction Lien Act* provides that a lien can be vacated (and certificate of action) upon payment into court or posting security of an amount determined to be reasonable in the circumstances to satisfy the lien.

**4** I note the lien and certificate is registered against each unit composing the **condominium**. There is no technical impediment to vacating the lien and certificate from title to one or more but not all of the units comprising the **condominium**.

**5** Further, given that pursuant to section 14(1) the unit holder's ultimate liability is no greater than the portion attributable to the unit I conclude that in order to vacate a lien against a particular unit the amount to be posted likewise

be an amount attributable to the owner's common interest as specified in the declaration. If each owner of the units in the **condominium** did then the lien claimant would be in no different position than if the lands were not registered as a **condominium**.

6 I can see no prejudice to the lien claimant. I can see prejudice to a unit holder in requiring the unit holder to post the whole security for the entire claim particularly in a large **condominium** with a large claim. The ability of a unit holder to deal with his unit would be frozen until the lien claim is disposed of contrary to the thrust and policy of the *Condominium Act* that an owner can have a lien vacate by posting security that the court determines to be reasonable in the circumstances to satisfy the lien as against the owner's interest in his lands.

7 For the aforesaid reasons order to go as sought relating to Unit 7 Level 2 (0.539), Unit 19 Level A (0.100) and Unit 86 Level A (0.025). In total moving applicant's interest equals 0.664 which translates into \$705.18 for lien and \$176.30 for costs as the applicable proportional amount required to vacate the lien against her interest (three PIN's). Order to go vacating claim for lien and certificate against the three PIN's on posting security in the amount of \$881.48.

8 Counsel addressed me on costs. The motion was novel and raised a legitimate issue. The applicant sought \$2,500.00. Counsel for the lien claimant argues that although the applicant is entitled to costs but as it is a matter of first instance it should be at a lesser sum. The motion took less than an hour. In fixing costs of paramount importance is the reasonable expectation of the parties as to costs on a motion such as this rather than an arithmetic exercise of hours spent times rate. Costs are fixed at \$2,000.00 inclusive of GST and disbursements to be paid by lien claimant to applicant.

9 Order to issue as signed upon posting the approved security.

MASTER J. POLIKA

qp/e/qlaxs/qlcnt