Court of Queen's Bench of Alberta

Citation: Bank of Montreal v Bala, 2015 ABQB 166

Date: 20150310
Docket: 1403 00577
Registry: Edmonton

Between:

Bank of Montreal

Plaintiff

- and -

Renu Bala and Fryad Singh Pannu

Defendants

Reasons for Judgment
of
S. L. Schulz, Master in Chambers

I. Background

[1] The Respondent/Plaintiff ("Bank of Montreal") held a first mortgage on a residential condominium unit and commenced foreclosure proceedings against the owners of the unit. A Redemption Order was granted permitting, *inter alia*, The Owners: Condominium Plan No. 812 0494 o/a Marilyn & Lynn Manor ("Condominium Corporation") to apply to amend the amounts owing to it. The Bank of Montreal subsequently took title to the condominium unit through an Order for Sale to Plaintiff.

[2] The Condominium Corporation now applies for a determination pursuant to sections 39 and 41 of the *Condominium Property Act*, RSA 2000, c C-22 ("***CPA***") as to the priority of the amounts claimed pursuant to its caveat over the mortgagee Bank of Montreal with respect to the:

1. amount of the insurance chargebacks, insurance deductible and repairs resulting from the water losses which occurred on or about November 20, 2013 and on or about January 27, 2014 ("Insurance and Repair Costs");
2. interest on the Insurance and Repair Costs; and
3. solicitor-client costs of this application.

[3] For the reasons that follow, I find that the amount of the Insurance and Repair Costs and the interest on those amounts form contributions within the meaning of sections 39 and 41 of the ***CPA***, thereby achieving priority over the interest of the mortgagee. The reasonable legal expenses incurred with respect to the preparation, registration, enforcement and discharge of the caveat as set out in section 42(b) are included in that priority interest. All other solicitor-client costs on a full indemnification basis that are awarded herein do not achieve a super priority status and are collectible as an *in personam* debt.

II. Issue

[4] In a situation where the mortgagee has taken title or there is a subsequent owner, can Insurance and Repair Costs, interest thereon, and solicitor-client costs be characterized as contributions due and owing to the condominium corporation within the meaning of sections 39 and 41 of the ***CPA***, or is the Condominium Corporation restricted to an *in personam* remedy?

III. The Overall Scheme Outlined in the *CPA*

[5] Section 39(1) allows for the collection of "administrative expenses", commonly referred to as "contributions".

[6] Under s. 39(2), the Condominium Corporation has the right to recover contributions that fall within s. 39(1) provided that either:

(a) the contributions are levied in proportion to the unit factor of the owner's respective units (s. 39(1)(c)(i)); or

(b) the bylaws allow the charges if they are charged on any basis other than unit factors (s. 39(c)(ii));

and

(c) a resolution is passed as set out in s. 39(2) establishing that the contributions are due and owing.

[7] If these requirements are met:

(a) the contribution can be recovered in an action for debt jointly and severally from the owner at the time the resolution was passed or from the owner at the time the action was instituted (s. 39(2));

(b) interest can be charged on overdue contributions at a rate that does not exceed the regulated amount (s. 40) and can be collected in the same manner as a contribution under section 39;

(c) reasonable legal expenses for the preparation, registration, enforcement and discharge of a caveat to collect an amount owing under s. 39 can be recovered (s. 42);

(d) the condominium corporation can file a caveat against the title to a unit for an owner's unpaid contribution (s. 39(7)), creating a statutory charge ("super priority") in favour of the condominium corporation to enforce its caveat (s. 39(8)); and

(e) any caveat filed under s. 39 (12) remains on title when the property is transferred by virtue of a foreclosure action until the contribution is paid to the corporation.

[8] If these requirements are **not** met, the condominium corporation is restricted to an unsecured *in personam* remedy against the owner at the time the charges were incurred.

IV. Analysis of the Case Law

[9] The statutory scheme appears to set out a straightforward mechanism for dealing with these charges, but an analysis of the case law shows it is anything but straightforward.

(a) The *Francis* Principle

[10] A condominium corporation is created by the ***CPA*** and derives all of its powers from that statute. A condominium corporation does not have the powers of a natural person and does not enjoy the same powers as bestowed upon corporations under the ***Business Corporations Act***, RSA 2000, c. B-9. *See*: ***Francis v Condominium Plan No. 8222909***, 2003 ABCA 234 at para. 25-27 ("***Francis***"); ***Condominium Corp No 042 5636 v Chevillard***, 2012 ABQB 131 at para 14.

[11] In this decision, I refer to this concept as the ***Francis*** Principle.

[12] The case law acknowledges the ***Francis*** Principle, but then diverges into what I will call the ***Jessamine/Callaghan*** **Approach** and the ***King*** **Approach**.

(b) The Jessamine/Callaghan Approach

[13] In ***Condominium Corporation No 0425177 v Jessamine***, 2011 ABQB 644 ("***Jessamine***"), Master Smart relied on the ***Francis*** Principle to use a restrictive approach to the interpretation of the ***CPA***. He finds that section 42(b) allows the collection of reasonable expenses incurred by the condominium corporation with respect to the preparation, registration, enforcement and discharge of a caveat, but all other legal costs can only be collected as an *in personam* judgement. The wording in the legislation takes precedence over any wording in the bylaws which may purport to capture legal costs as a charge under the caveat: *See* para. 28-29.

[14] The restrictive approach to the interpretation of the CPA is again applied in ***Condominium Plan No. 8722887 v Callaghan***, 2011 A QB 638 ("***Callaghan***"), where Master Schlosser finds that the ***CPA*** distinguishes between collective obligations and individual obligations with the distinction governing the method of recovery:

i. Collective obligations achieve an *in rem* quality by virtue of being a contribution under section 39(1)(a)-(c) and 39(2) of the ***CPA***. *In rem*

> obligations can sustain a caveat. This is sometimes referred to as a "super priority".
>
> ii. Individual obligations fall under section 39(1)(d) of the **CPA**, which designates collection as a personal debt. A personal debt is an *in personam* claim and will not sustain a caveat.
>
> ***Callaghan***, para 5

[15] Master Schlosser goes on to find that section 42 of the ***CPA*** does not give any special status or priority to legal expenses and therefore does not permit legal expenses to form part of the claim protected by a caveat. Legal expenses are only collectible as an *in personam* judgment. He notes that section 42(b) specifically allows reasonable expenses arising from the preparation, registration, enforcement and discharge of the caveat, but does not otherwise include legal fees (*See* ***Callaghan***, para. 7-8).

[16] In summary, the ***Jessamine/Callaghan* Approach** strictly interprets the wording of the ***CPA*** and confines the powers given to the condominium corporation to those specifically set out in the ***CPA***. To claim any special protection or advantage, the condominium corporation must find it specifically in the ***CPA***. Silence on a point means that the condominium corporation does not have the power to "add it in".

(c) The *King* Approach

[17] In ***Condo Plan 8210034 v King***, 2012 ABQB 127 ("***King***"), Master J.T. Prowse quotes the ***Francis*** Principle, but then goes on to apply a broad, liberal policy interpretation to the ***CPA*** based on business efficacy and fairness:

> [7] If an economic downturn results in numerous owners not paying their assessments, and the collection expenses incurred are not secured by a statutory charge, then the inability to recoup these expenses could lead to a severe hardship for the remaining unit owners who are keeping up their payments. Having debts owed to the condominium corporation washed away during foreclosures or bankruptcies of defaulting unit owners is not in the interest of unit owners as a collective, and it is unfair to those unit owners who continue to pay assessments.
>
> ...
>
> [12] In my view, the [***CPA***] should be interpreted in a broad and liberal way, and in a manner conducive with the successful operation of condominium corporations. However, it must also be kept in mind that broad, liberal and remedial interpretations do not permit the courts to ignore words that are part of an enactment: see ***Francis***, supra, para 30.
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> ***King*** at para 7 and 12

[18] Master Prowse expressly disagrees with ***Jessamine*** stating that section 42 of the ***CPA*** deals with the condominium corporations' *entitlement* to collect expenses, not with *how* the corporation can recover its expenses. He concludes that *collection expenses* can be included in an assessment/contribution and be protected by way of a caveat: (*See* ***King***, para 29-32.)

[19] Master Prowse expressly disagrees with ***Callaghan*** stating that although section 39(1)(d) provides a method for the collection of certain debts, it does not implicitly prohibit the condominium corporation from including these expenses as part of the section 39 contributions. He concludes that unpaid collection expenses can be included in the caveat by virtue of the fact that they are expenses, but fines and penalties cannot be included because they are not expenses. Uncollected, overdue interest is not an expense but can be included as a statutory charge by virtue of the specific provision of section 40: See ***King***, para 33-40.

[20] At para 49 of ***King***, Master Prowse sets out the following procedure for determining whether an amount can form a contribution:

> 1. Firstly, if the claim is for a typical assessment, or overdue interest on such an assessment, then the claim is protected by the statutory charges under section 39 and section 41 of the Act. There is no need for any review of the bylaws in this regard, other than to confirm the interest rate chargeable on overdue assessments. That interest rate is capped by regulation, and the current cap is 18% per annum.
>
> 2. If the claim is for other expenses incurred with respect to a particular unit ('expenses' does not include uncollected revenue such [as] fines or rents) then the bylaws of the corporation have to be examined to determine if they allow these expenses to be included as part of the assessment against that particular unit. If the bylaws are clear in this regard then these individually assessed expenses, and overdue interest on them, are covered by the statutory charges under section 39 and section 41 of the Act.
>
> 3. Claims which do not fall under item 1 or item 2 may be subject to a contractual charge pursuant to the bylaws of the corporation. For example, some bylaws I have examined grant a charge against units to secure all amounts owed by that unit owner to the corporation. If adequately worded, this contractual charge would cover things such as collection expenses not brought under item 2, unpaid fines, unpaid rents, etc.
>
> 4. Any claims which do not fall under items 1, 2, or 3 are unsecured.
>
> [*Emphasis in Original*]

[21] In summary, the ***King* Approach** views the ***CPA*** permissively, through the lens of a broad liberal policy that considers the provisions of the ***CPA*** capable of being augmented according to that policy. Using this approach, silence in the ***CPA*** does not necessarily mean that everything else is disallowed, rather it means that if there is something that policy dictates is consistent and reasonable with the wording of the ***CPA***, that section of the ***CPA*** should be interpreted to include it. ***King*** summarizes the legislation by setting out a 4 step process, and then uses the broad liberal policy to interpret what the underlying sections include or exclude.

(d) Reconciliation of the Two Approaches and the *Francis* Principle

[22] The 4 steps outlined in the ***King*** Approach are consistent with the ***Jessamine/Callaghan*** Approach because the 4 steps are based on the legislative scheme. The difference in the two approaches comes with the use of the broad liberal interpretation in ***King***, which results in the inclusion of items as expenses (and therefore caveatable charges) that the strict interpretation approach used in ***Jessamine*** and ***Callaghan*** does not.

[23] Which of these approaches to interpretation of the ***CPA*** is correct?

[24] Two Justices of the Court of Queen's Bench have commented on the legislative scheme under the CPA: Justice Dario in ***Bank of Montreal v Rajakaruna***, 2014 ABQB 415 ("***Rajakaruna***") and Justice Lee in ***Condominium Plan No 052 6233 v Seehra***, 2014 ABQB 588 ("**Seehra**").

[25] In ***Rajakaruna***, Justice C. Dario starts with the proposition that condominium corporations are created by the ***CPA*** and derive their powers from the ***CPA***. This is basically the ***Francis*** Principle. She holds that a condominium corporation cannot get indirectly what the legislation does not permit directly. If there is a conflict between the legislation and the bylaws, the legislation prevails. These comments are consistent with the restrictive interpretation advanced in the ***Jessamine/Callaghan Approach***. Justice Dario approves the 4 step approach set out in ***King*** but does not address any claims under step 2, nor what is included or excluded in that step. She does address and apply step 3 as set out in ***King*** without commenting on the differences in the interpretive approaches. Further she clarifies that claims made under step 3 may be caveatable by virtue of a contractual agreement, but those claims do not obtain the "super priority" granted by a statutory charge: ***Rajakaruna***, para. 79-83.

[26] The ***Seehra*** decision of Justice Lee addresses the issue of whether solicitor-client fees have "super priority" to the mortgage registered against the unit. Justice Lee does not address the ***Francis*** Principle and it is not clear that it was brought to his attention. He accepts and endorses the 4 step process, specifically endorses the reasoning of Master Prowse, and specifically rejects the reasoning of Master Smart and Master Schlosser. Justice Lee concludes:

> [58] Accordingly, I conclude that since the Applicant Condominium Corporation's claims are for expenses incurred with respect to the Respondent's particular unit—following his infraction of the Bylaws—and the relevant Corporation Bylaws, in its section 3.3(m), allow these expenses to be included as part of the assessment (contribution) against the Respondent's particular Unit, the individually assessed expenses, and overdue interest on them, are covered by the statutory charges under section 39 and 41 of the *CPA*.
>
> [59] In the result, subject to assessment of the solicitor-client costs by the assessment officer, the Applicant's expenses in the circumstances of this matter form part of the Respondent Unit's assessment for contributions under the CPA, s 39, and constitute caveatable interests in priority to RBC's registered mortgage.

[27] With the greatest of respect, the ***King*** Approach and the decision of Mr. Justice Lee are difficult to understand in light of the ***Francis*** Principle that a condominium corporation only has the powers given to it in the ***CPA***. Although the Court of Appeal was dealing with an earlier version of the ***CPA***, its comments are instructive:

> [30] The respondents also argue that the provisions of the Act are to be given a liberal and remedial interpretation. However, the broad, liberal and remedial interpretations do not permit courts to ignore words that are part of an enactment. The only provision in the Act dealing with the issue of how fees are to be collected is s. 31. That provision enables a condominium corporation to collect fees on a unit factor basis. It does not empower condominium corporations to

> collect fees based on other considerations. It is not the role of the courts to enlarge what the legislature has chosen to provide for whenever a possible inequity may occur as a result of the enforcement of the plain meaning of the legislative provisions...
>
> [32] The scheme of the Act does not permit a court to impose what it considers to be fair on a case-by-case basis. Rather, the scheme is designed to provide certainty to owners and corporations alike. It thereby achieves fairness, as a reading of relevant provisions reveals that the legislature has chosen to limit the power of condominium corporation [*sic*] to impose fees...
>
> ***Francis***, at para 30 and 32 [Emphasis added]

[28] Having considered the comments of the Court of Appeal in ***Francis*** and having reviewed the applicable sections of the ***CPA***, I conclude that the 4 step approach set out in ***King*** is an acceptable way to analyze any given fact situation, but that the restrictive interpretative approach approved by the Court of Appeal in ***Francis*** and endorsed by the ***Jessamine/Callaghan*** Approach should be used to interpret what is included at each step. As will be seen in the discussion following, I am bound by the Court of Appeal in ***Francis,*** and therefore I respectfully disagree with the ***Seehra*** decision.

V. Analysis of this Fact Situation

(a) Insurance and Repair Costs

[29] The Insurance and Repair Costs incurred here are not a typical assessment or contribution. They are the result of two separate water losses, the deductibles from those losses and the repair costs that were not covered by the insurance policy. These costs do not fall within step 1 of ***King***.

[30] Both the Condominium Corporation and the Bank of Montreal agree that the Insurance and Repair Costs are capable of forming a contribution under Step 2 if the bylaws so provide (*See* s. 39(1)(c)(ii)). The relevant questions are:

(i) whether the Bylaws demonstrate a clear intention for such contributions to be levied with respect to the Insurance and Repair Costs (section 39(1)(c));

(ii) whether the Bylaws demonstrate a clear intention for the Condominium Corporation to levy contributions on a basis other than in proportion to unit factor (section 39(1)(c)(ii);and

(iii) whether a resolution(s) has been passed that the Insurance and Repair Costs are due and owing and may be recovered by the corporation from the person who was the owner at the time the resolution was passed and from the person who was the owner at the time when the action was instituted (section 39(2)).

(i) Bylaws

[31] The last paragraph of s. 46 of the Bylaws provides:

> Without limiting any provision in these Bylaws extending greater liability to an Owner for damage caused by an Owner's breach of Bylaws or other fault, in the event a claim is made under any

> policy of insurance maintained by the Corporation and the cause of the loss or damage for which the claim is made is a negligent or other wrongful act or omission of or a breach of Bylaws by an Owner or his tenants, family, guests, invitees or licensees, then the Owner shall pay to the Corporation the amount of any insurance deductible applicable to such loss or damage. Such deductible amount shall be recoverable by the Corporation as if it were a Common Expense levy upon the Owner's Unit or Units and will be charge upon such Unit or Units. [*Emphasis added*].

[32] Section 84 of the Bylaws provides:

> The Corporation shall be entitled to be paid by the defaulting Owner the costs incurred in preparing and registering the caveat, in enforcing or seeking to enforce the Corporation's lien and in discharging the caveat, all on a solicitor-and-his-own-client full-indemnity basis, and shall not be obliged to discharge any caveat until all arrears of the Owner (including interest and all such costs) are fully paid. [*Emphasis added*].

[33] Section 46 of the Bylaws provides that if a claim is made under an insurance policy as a result of a negligent or other wrongful act or omission of either the tenant or the owner, the owner shall pay to the Condominium Corporation the amount of the deductible applicable as if it were a common expense levy. Since sections 46 and 84 of the Bylaws provide that the insurance expenses and legal costs can be charged back to the unit owner in relation to the Insurance and Repair Costs, the contributions are necessarily being levied on something other than in proportion to unit factors.

[34] The bylaws are sufficiently clear to include the Insurance and Repair Costs as contributions under section 39(1) and Step 2 of ***King***. Condominium bylaws constitute a contract between the condominium corporation and all unit owners: ***King*** at para 44; ***Seehra*** at para 48. The "cardinal rule" of contract interpretation is that the intention of the parties must prevail: ***Metropolitaine, cie d'assurance-vie c Frenette***, 1992 Carswell Que 95 at para 28. Therefore, it is sufficient if the bylaws show a clear intention to give the Condominium Corporation the power to levy contributions on a basis other than in proportion to unit factors and in what situations it may do so.

[35] With all of this being said, I agree with the Bank of Montreal that it is important that there not be constant litigation over whether an expense forms a contribution and a caveatable interest. It would be ideal for the bylaws to first provide that contributions may be levied on a basis other than in proportion to unit factors generally and then provide further details and particulars about when and how this may be done. However, the standard here cannot be perfection and for the foregoing reasons, I conclude that the Bylaws here are sufficiently clear.

(ii) Resolutions

[36] Next, it must be determined if the appropriate Resolutions were passed by the Condominium Corporation Board.

[37] The Resolutions in question appear in the Board's minutes. The first Resolution, passed on January 21, 2014, provides:

> Unit 9 to 4 -10141 water damages are slow to repair, the Owner has not been paying for power to the unit (4), so the contractor can only work daylight hours and plug into hallway power, the Tenants have vacated unit 4 due to unfit living conditions. Unit 9 has been charged back for the damages not meeting the deductible as the loss was due to an act of the Tenant; the Board reviewed the plumber comments. KDM to keep charging back until/if it reaches the deductible of $20,000. Also a caveat must be placed for these costs and outstanding contributions. **MOTION:** Stephen Kasowski, **SECONDED:** Brian Fellows. **CARRIED**.

[38] The second Resolution, passed on February 18, 2014, provides:

> Unit 9 to 4 water loss - #4 – 10141 electricity set up by Corporation to ensure work can be completed in a swift timeframe.
> The unit (4) was complete other than the carpet, and then the unit above (9) caused **another flood** to the newly repaired unit.
> The Owner of unit 9 intends to dispute the chargebacks of the first flood. KDM has advised the Owner should speak with a Lawyer prior to disputing as the Bylaws outline the insurance requirements.
> Second flood incurred costs will also be billed back to the Owner, pending Plumber report of events. **MOTION:** Sintra Lewis, **SECONDED:** Brian Fellows. **CARRIED**.

[39] The third Resolution, passed on March 18, 2014, provides:

> Collection of outstanding charges, a caveat has been filed. The water loss has reached the deductible; that is the most that the Corporation can chargeback for the first loss. The second loss is also due to an act of the Tenant and is chargeable under the Bylaws back to the Owner. The Corporation cannot operate with such large arrears, KDM to chargeback, caveat and seek legal collections. **MOTION:** Sintra Lewis, **SECONDED:** Stephen Kasowski. **CARRIED**.
>
> [Emphasis in original]

[40] I take a similar approach with respect to interpreting the Resolutions as taken to an interpretation of the Bylaws. Each of these three Resolutions provides that the amounts will be charged or billed back to the Unit Owners. Two of the Resolutions provide that a caveat will be registered. These references sufficiently demonstrate a clear intention that the contribution is due and payable.

[41] Again, the relevant issue is whether the Resolutions demonstrate a clear intention that the contribution is due and payable, and I conclude that the Resolutions here are sufficiently clear.

[42] Again, I agree with the Bank of Montreal that it would be ideal for resolutions to clearly provide that a special assessment or contribution is being levied and on a basis other than in proportion to unit factors. However, I am persuaded by the Condominium Corporation's argument that boards are owed leniency since board members are volunteers and not usually legal professionals. To require boards to use magic words such as "special assessment" or "disproportionate basis" would be to set too high a standard. Master Smart acknowledged this in ***Jessamine*** at para 20 where he said:

> Boards of condominium corporations are typically made up of owners most of whom have not received any training nor have any particular skill or experience dealing with corporate formalities. Many are assisted by so-called professional property managers as advisers who have widely varying skill sets and experience often with limited expertise. Matters are confounded by the industry and their lawyers who have adopted terminology ... Some boards have the fortune to have a legally trained individual with some corporate skills as an owner and who agrees to sit on the Board. Few of these, however, are experienced in the rather unique characteristics of the Act and its import when operating a Condominium Corporation.

[43] The standard for the wording of the Resolutions cannot be perfection and for the foregoing reasons, I conclude that the Resolutions are sufficiently clear for the purpose of section 39(2) of the ***CPA***.

(b) Interest on the Insurance and Repair Costs

[44] Having determined the Insurance and Repair Costs are contributions under section 39 of the **CPA**, it follows that the interest on those amounts also forms a contribution and attracts a statutory priority by virtue of sections 40 and 41 of the ***CPA***.

(c) Legal Expenses

[45] Section 84 of the bylaws provides that the Condominium Corporation is entitled to:

> ...the costs incurred in preparing and registering the caveat, in enforcing or seeking to enforce the Corporation's lien and in discharging the caveat, all on a solicitor-and-his-own-client full-indemnity basis...

[46] Section 42 of the ***CPA*** provides:

> **Recovery of Costs**
>
> 42 Where a corporation takes any steps to collect any amount owing under section 39, the corporation may
>
> (a) recover from the person against whom the steps were taken all reasonable costs, including legal expenses and interest, incurred by the corporation in collecting the amount owing, and
>
> (b) if a caveat is registered against the title to the unit, recover from the owner all reasonable expenses incurred by the corporation with respect to the preparation, registration, enforcement and discharge of the caveat.
>
> [Emphasis added]

[47] In ***Seehra***, Justice Lee used a broad interpretation to find the wording of section 42 sufficient to include all legal expenses as a caveatable contribution. With the greatest of respect, I disagree with his interpretation and follow the Court of Appeal in ***Francis***. I accept a restrictive interpretation of the section 42 as set out in the preceding paragraph. In so far as the bylaws contradict section 42 of the ***CPA***, the ***CPA*** takes priority.

[48] In general, the condominium corporation can collect its legal expenses as an *in personam* judgment pursuant to section 42(a). Those costs, in an amount to be assessed on a solicitor and

own client full indemnity basis, are hereby awarded and can be collected as an *in personam* judgment, those costs to be assessed for reasonableness by the Assessment Officer.

[49] An additional collection remedy is given to the condominium corporation in section 42(b) for "all reasonable expenses incurred by the corporation with respect to the preparation, registration, enforcement and discharge of the caveat". These legal expenses, and only these legal expenses, can be collected from the owner as part of the caveatable interest protected by section 39 of the ***CPA***. The rest fall under section 42(a) as an ***in personam*** judgment.

VI Conclusion

[50] The statutory charges in sections 39(8) and 41 are significant because they give the condominium corporation a caveatable interest or "super priority": ***King*** at para 17.

[51] Under Step 2, the contribution must be permitted by the bylaws and be due and payable by virtue of the passage of a resolution to that effect (s. 39(2)).

[52] Here, the bylaws allow for the Insurance and Repair Costs to be included as part of the contributions levied against the Unit. The bylaws demonstrate a clear intention for the Condominium Corporation to levy contributions on a basis other than in proportion to unit factor, and for such contributions to be levied with respect to Insurance and Repair Costs. Similarly, the resolutions provide that the amounts will be charged or billed back to the unit owners. They sufficiently demonstrate a clear intention that the contribution is due and payable and a caveat will be registered.

[53] Having determined that the Insurance and Repair Costs are contributions under section 39, it follows that the interest on those amounts also forms a contribution by virtue of sections 40 and 41 of the ***CPA***.

[54] For these reasons, I conclude that the amount of the Insurance and Repair Costs and interest on those amounts form contributions and give the Condominium Corporation a caveatable interest with a "super priority".

[55] All reasonable expenses incurred by the Condominium Corporation with respect to the preparation, registration, enforcement and discharge of the caveat also form part of the caveatable interest (section 42(b)).

[56] All other reasonable costs on a solicitor and own client full indemnification basis are *in personam* debts and shall be assessed for reasonableness by the Assessment Officer.

II. Costs of this Application

[57] The parties may speak to me within 30 days of this decision if they cannot agree on costs.

Dated at the City of Edmonton, Alberta this 10th day of March, 2015.

S. L. Schulz
M.C.C.Q.B.A.

Appearances:

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