

2011 CarswellAlta 2056, 2011 ABCA 356

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Condominium Plan No. 762 1828 v. Marusyn

The Owners: Condominium Plan No. 762 1828 o/a Claregreen Mews, Respondent (Applicant) and  
Gail P. Marusyn, Appellant (Respondent)

Alberta Court of Appeal

Frans Slatter J.A., Jean Côté J.A., Marina Paperny J.A.

Heard: December 2, 2011

Judgment: December 2, 2011

Docket: Edmonton Appeal 1103-0025-AC

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Proceedings: Affirmed, [2010 CarswellAlta 2519](#), [\[2011\] A.W.L.D. 697](#), [\[2011\] A.W.L.D. 698](#),  
[2010 ABQB 523](#) (Alta. Q.B.)

Counsel: R. Noce, Q.C., for Respondent

T.D. Bosse, Q.C., for Appellant

Subject: Property

Real property.

***Frans Slatter J.A.:***

1 The issue on this appeal is whether the exterior doors and windows of the appellant's condominium unit are a part of the common property, or a part of her own unit. The chambers judge concluded that they were common property: [Condominium Plan No. 762 1828 v Marusyn, 2010 ABQB 523, 503 AR 251](#).

2 When the condominium was built in 1976, the registered plan had endorsed on it:

The common boundary with the common property is the outside face of the outside walls and

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with any adjacent unit the center of the party wall.

It appears that the doors and windows were initially treated as being part of the units, not a part of the common property.

3 Before the enactment of the *Condominium Property Amendment Act, 1996*, SA 1996, c. 12, which came into force on September 1, 2000, all doors and windows were part of the units unless otherwise stipulated in the condominium plan. After that enactment, the presumption was reversed by the present s. 9(2)(b) of the *Condominium Property Act, RSA 2000, c. C-22*:

9(1) Unless otherwise stipulated in the condominium plan, if

(a) a boundary of a unit is described by reference to a floor, wall or ceiling, or

(b) a wall located within a unit is a load bearing wall,

the only portion of that floor, wall or ceiling, as the case may be, that forms part of the unit is the finishing material that is in the interior of that unit, including any lath and plaster, paneling, gypsum board, panels, flooring material or coverings or any other material that is attached, laid, glued or applied to the floor, wall or ceiling, as the case may be.

(2) Notwithstanding subsection (1),

(a) all doors and windows of a unit that are located on interior walls of the unit are part of the unit unless otherwise stipulated in the condominium plan, and

(b) all doors and windows of a unit that are located on exterior walls of the unit are part of the common property unless otherwise stipulated in the condominium plan.

(3) For the purposes of subsection (2), a reference

(a) to a door includes the door, the door frame and the door assembly components, if any, but does not include the door casing, trim or mouldings, and

(b) to a window includes the glazing, the window frame and the window assembly components, if any, but does not include the window casing, trim or mouldings.

(4) Notwithstanding subsections (1) and (2), if a condominium plan was registered prior to January 1, 1979, the common boundary of any unit described in the condominium plan with another unit or with common property is, unless otherwise stipulated in the condominium plan, the centre of the floor, wall or ceiling, as the case may be.

There was a transitional provision that allowed owners of existing condominiums to pass a special

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resolution that would make doors and windows a part of the individual units, but no such resolution was passed by the respondent condominium corporation.

4 It follows that the exterior doors and windows of the appellant's unit are a part of the common property unless "otherwise stipulated in the condominium plan". The only potentially relevant stipulation is the one providing that the boundary of each unit with the common property is "the outside face of the outside walls". The appellant argues that since the exterior doors and windows are within the outside face of the outside walls, they are a part of her unit.

5 The chambers judge found that the endorsement on the condominium plan was not sufficient to take the doors and windows outside the statutory presumption. This is correct, because the post-2000 *Condominium Property Act*, which is what is being interpreted here, draws a clear distinction between "floors, walls and ceilings" on the one hand, and "windows and doors" on the other. The present statutory presumption in s. 9(1) and (4) is that for condominiums built before 1979, the boundary is the center of "floors, walls and ceilings", but that after 1979 only the paneling and finishing material of "floors, walls and ceilings" is part of the unit. On the other hand, under s. 9(2) and (3) a different presumption prevails for exterior "windows and doors": under s. 9(2) they are, to the extent described in s. 9(3), a part of the common property. The endorsement on the condominium plan refers only to "walls", and given the structure of the statute, that endorsement should not be extended to cover "doors and windows".

6 There being no error shown in the decision under appeal, the appeal is dismissed.

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## KEYCITE

**[H Condominium Plan No. 762 1828 v. Marusyn](#)**, 2011 CarswellAlta 2056, 2011 ABCA 356 (Alta. C.A., Dec 02, 2011)

### History

#### Direct History

1 Condominium Plan No. 762 1828 v. Marusyn, 503 A.R. 251, 2010 CarswellAlta 2519, 2010 ABQB 523, [2011] A.W.L.D. 697, [2011] A.W.L.D. 698 (Alta. Q.B. Aug 11, 2010)

*Affirmed by*

=> 2 **Condominium Plan No. 762 1828 v. Marusyn**, 2011 CarswellAlta 2056, 2011 ABCA 356 (Alta. C.A. Dec 02, 2011)

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