

Case name:

Matte v. Boudreau

Between

Bernard Denis Matte, plaintiff, and
Jocelyne L. Boudreau, defendant

[2004] N.B.J. No. 243
Court File No. M/SC/0157/04

**New Brunswick Small Claims Court
Judicial District of Moncton
Adjudicator LeBlanc**

Heard: June 23, 2004.
Judgment: June 23, 2004.
(15 paras.)

Counsel:

Bernard Denis Matte, per se.

Jocelyne L. Boudreau, per se.

ADJUDICATOR LeBLANC:--

FACTS

- ¶ 1 On July 29, 2003, the plaintiff purchased a condominium unit from the defendant.
- ¶ 2 When the unit was purchased, the condominium corporation was indebted to a lending institution for a loan contracted in 2001 for the purpose of having work performed on the roof of the units. Accordingly, in July 2001, a resolution was adopted that the monthly condominium fees be increased to \$100 in order to repay the loan contracted for the renovations to the roof.
- ¶ 3 When the plaintiff purchased the defendant's unit in July 2003, the monthly condominium fees remained at \$100. In October 2003, a meeting of the members of the condominium corporation was held and it was decided that the monthly condominium fees would be increased and that each unit owner would contribute an additional sum in order to reimburse the loan contracted for the purpose of repairing the roof over a shorter period of time. The plaintiff was in attendance at this meeting and voted in favor of the increase and contribution of the additional sum.
- ¶ 4 The plaintiff now claims that the defendant is liable to him for the increase in the condominium fees and the amount he has to contribute towards the repayment of the loan, being a total amount of \$1,138.43. His claim is based on the fact that when the purchase and sale transaction was done, the Estoppel certificate provided by the condominium corporation erroneously stated that:

"... The corporation has not borrowed nor has it made application to borrow any monies as of the date hereof."

¶ 5 The issue is further clouded by the fact that the Estoppel Certificate was signed by the defendant.

¶ 6 The plaintiff now contends that the defendant should have disclosed the loan contracted by the condominium corporation and that because of such omission she is liable to him for the amount of \$1,138.43.

ANALYSIS

¶ 7 There can be no claim maintained against the defendant as the vendor of the condominium unit. The sum of money which is the object of this claim was not a debt owing by the defendant nor did it constitute an encumbrance against the condominium unit.

¶ 8 Both the plaintiff and defendant were represented by lawyers in the sale and purchase of the defendant's condominium unit.

¶ 9 According to the condominium corporation's general by-law, Estoppel Certificates issued by the corporation had to be signed by 2 officers of the corporation under its corporate seal. In this instance, only 1 officer signed the Estoppel Certificate provided to the plaintiff's lawyer. The Estoppel Certificate was in fact signed by the defendant, in her capacity as Treasurer of the condominium corporation.

¶ 10 The defendant acknowledged that the Estoppel Certificate was erroneous; she stated that the executive of the corporation had never thought of modifying the Estoppel Certificate after it had contracted the loan to repair the roof.

¶ 11 While the existence of the loan was not revealed in the Estoppel Certificate, the sum of money which is the object of this claim did not become owing by the plaintiff until such time a resolution was adopted by the members of the condominium corporation in October 2003, to the effect that the monthly condominium fees should be increased and that each member of the corporation would contribute a lump sum to be applied towards repayment of the loan contracted by the condominium corporation. The plaintiff acknowledges that he not only attended and participated in the meeting during which such resolution was adopted but that he also voted in favor of such resolution.

¶ 12 Whether it was revealed or not to the plaintiff, the fact remains that the loan contracted by the condominium corporation in 2001 did not, in July 2003, have any bearing on the plaintiff's ownership of the condominium unit nor with regard to his position vis à vis the condominium corporation. In July 2003, he, as the new owner of the unit assumed payment of the monthly condominium fees which had been the defendant's responsibility prior to the sale of the condominium and this situation changed only as a result of the resolution adopted in October 2003. But for the resolution adopted in October 2003 and in which the plaintiff participated, the status quo and past practice of using part of the monthly condominium fees of \$100 for reimbursement of the loan would have continued indefinitely.

¶ 13 The evidence establishes that the information contained in the Estoppel Certificate produced by the condominium corporation was incorrect and that the Certificate itself was not issued in accordance with the provisions of section 13 of the condominium corporation's by law. Whether the plaintiff sustained any damage as a result of such defects is, in my opinion doubtful; in any event, it is not a question which I am called upon to determine in this matter. What is clear however is that the plaintiff has no claim against the defendant in her personal capacity.

DISPOSITION OF THE MATTER

¶ 14 For the reasons mentioned herein, the plaintiff's claims against the defendant are dismissed.

¶ 15 Each party shall bear their own costs in this proceeding.

ADJUDICATOR LeBLANC

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