CITATION: Royal Bank of Canada v. Metropolitan Toronto Condominium Corporation No. 1226, 2012 ONSC 5906
COURT FILE NO.: 12-35966
DATE: 2012/10/17

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	
Royal Bank of Canada	Jeffrey Kukla, for the Applicant
Applicant	
- and -	
Metropolitan Toronto Condominium Corporation No. 1226	B. Rutherford and B. Chaplick, for the Respondent
Respondent	
	HEARD: August 12, 2012

WHITTEN J.

RULING ON AN APPLICATION FOR A DECLARATION THAT A LIEN UNDER SECTION 85(7) OF THE CONDOMINIUM ACT, R.S.O SHOULD BE DISCHARGED OR ASSOCIATED RELIEF

INTRODUCTION

[1] The Royal Bank of Canada (RBC) has applied to the court for an order discharging a lien registered by Metropolitan Toronto Condominium No. 1226 (the Condominium Corporation). The latter corporation was represented by Fine and Deo LLP (F&D).

ISSUES

[2] RBC on July 26, 2010 paid $15,071.75 to discharge the lien. RBC had paid a further sum of $12,651.16 on July 28, 2012. As of the return of this application, the lien discharge had not been issued.

[3] The discharge of a condominium lien pursuant to s. 85 of the *Act* is normally not a complicated exercise, however, in this matter, a discharge was not forthcoming because F&D claimed that their firm (representing the condominium corporation), provided more services and incurred more costs after the sum advanced by RBC on July 26, 2010. The principal issue is whether these services and their expenses were within the scope of s. 85.

[4] The court on the return of this motion did request further written submissions with respect to "reliance" on various payout letters provided by F&D. That is an issue which does not need to be canvassed in this ruling.

THE LAW

The Statute

[5] The applicable sections of the Condominium Act, S.O. 1998 Chapter 19 are:

> Contribution of owners
>
> 84. (1) Subject to the other provisions of this Act, the owners shall contribute to the common expenses in the proportions specified in the declaration.
>
> Lien upon default
>
> 85. (1) If an owner defaults in the obligation to contribute to the common expenses, the corporation has a lien against the owner's unit and its appurtenant common interest for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount.
>
> Expiration of lien
>
> (2) The lien expires three months after the default that gave rise to the lien occurred unless the corporation within that time registers a certificate of lien in a form prescribed by the Minister.
>
> Certificate of lien

(3) A certificate of lien when registered covers,

(a) the amount owing under all of the corporation's liens against the owner's unit that have not expired at the time of registration of the certificate;
(b) the amount by which the owner defaults in the obligation to contribute to the common expenses after the registration of the certificate; and
(c) all interest owing and all reasonable legal costs and reasonable expenses that the corporation incurs in connection with the collection or attempted collection of the amounts described in clauses (a) and (b), including the costs of preparing and registering the certificate of lien and a discharge of it.

Notice to owner

(4) At least 10 days before the day a certificate of lien is registered, the corporation shall give written notice of the lien to the owner whose unit is affected by the lien.

Lien enforcement

(6) The lien may be enforced in the same manner as a mortgage.

Discharge of lien

(7) Upon payment of the amounts described in subsection (3), the corporation shall prepare and register a discharge of the certificate of lien in the form prescribed by the Minister and shall advise the owner in writing of the particulars of the registration.

Priority of lien

86. (1) Subject to subsection (2), a lien mentioned in subsection 85(1) has priority over every registered and unregistered encumbrance even though the encumbrance existed before the lien arose but does not have priority over,

(a) a claim of the Crown other than by way of a mortgage;
(b) a claim for taxes, charges, rates or assessments levied or recoverable under the *Municipal Act*, the *Education Act*, the *Local Roads Boards Act*, the *Statute Labour Act* or the *Local Improvement Act*; or
(c) a lien or claim that is prescribed.

Notice of lien

(3) The corporation shall, on or before the day a certificate of lien is registered, given written notice of the lien to every encumbrancer whose encumbrance is registered against the title of the unit affected by the lien.

Service of notice

(4) The corporation shall give the notice by personal service or by sending it by registered prepaid mail addressed to the encumbrancer at the encumbrancer's last known address.

Effect of no notice

(5) Subject to subsection (6), the lien loses its priority over an encumbrance unless the corporation gives the required notice to the encumbrancer.

Mortgagee's rights

88. (1) Every mortgage of a unit shall be deemed to contain a provision that,

(a) the mortgage has the right to collect the owner's contribution to the common expenses and shall promptly pay the amount so collected to the corporation on behalf of the owner;

(b) the owner's default in the obligation to contribute to the common expenses constitutes default under the mortgage;

(c) the mortgagee has the right to pay,

(i) the amounts of the owner's contribution to the common expenses that from time to time fall due and are unpaid in respect of the mortgaged premises,

(ii) all interest owing and all reasonable legal costs and reasonable expenses that the corporation incurs in connection with the collection or attempted collection of the amounts described in subclause (i), including, where applicable, the costs of preparing and registering a certificate of lien and a discharge of it;

> (d) payments made by the mortgagee under clause (c), together with interest and all reasonable costs, charges and expenses incurred in respect of the payments, are to be added to the debt secured by the mortgage and to be payable, with interest at the rate payable on the mortgage; and
> (e) if after demand the owner fails to fully reimburse the mortgagee, the mortgage immediately becomes due and payable at the option of the mortgagee.
>
> Statement of common expenses
>
> (2) A corporation shall, on request and free of charge, provide to the mortgagee of a unit a written statement setting out the common expenses in respect of the unit and, if there is a default in the payment of them, the amounts described in subsection 85(3) in respect of the unit.

Principles of Statutory Interpretation

[6] Lane J. in *York Condominium Corporation No. 482 v. Christiansen* (2003) 64 O.R. (3d) 65 referred to the principles of statutory interpretation enunciated by Iacobucci J. in *Rizzo v. Rizzo Shoes Ltd: Re* (1998) 1 S.C.R. 27 (S.C.C.). Statutory interpretation is not to be strictly a literal exercise. It is to be contextual with an eye to the objects of the statute. As Iacobucci J. stated "every Act is deemed to be remedial and shall receive ... such fair, large and liberal construction and interpretation as will best ensure the attainment of the objects of the Act according to its true intent, meaning and spirit."

The Condominium Act Regime

[7] Lane J. described the Condominium Act as creating a unique interest in residential land, which at the same time preserved some of the familiar instruments of residential property law: for example, mortgages, liens, etc. Common expenses are particular to condominiums. These expenses provide for proportionate contributions to the operating expenses of a condominium. Justice Lane stated "(t)his common expense fund is the central mechanism to achieve financial fairness among the owners. If one owner fails to pay, the others must bear his burden; the expenses are not optional and they do not just go away". (Ibid at para. 5)

[8] One tool available to the condominium corporation to compel payment of the common expenses due from a unit owner, is the ability to put a lien on the owner's unit(s). As set out above, in s. 85(1) the lien amount is for a) the outstanding common expenses and interest thereon, and b) all reasonable legal costs and reasonable expenses incurred by the corporation in connection with c) the collection or attempted collection of the unpaid amount. Therefore, the statutory language limits those costs above and beyond the actual common expense deficiency to those which are both reasonable and causally connected to the collection of the common

expenses deficiency. The requirement that common expenses costs be reasonable presupposes that these costs are objectively proportionate and appropriate. (Actually, this requirement was acknowledged by Mr. Chaplick of F&D in his correspondence of January 28, 2011 to Eftoda.)(emphasis added)

[9] The mandatory language of s. 85(7) requires that upon receipt of these amounts that the lien be discharged.

[10] Section 86(1) provides that this lien has priority over certain encumbrances. The RBC mortgage registered May 8, 2000 would be such a prior encumbrance. However, s. 88 does give a mortgagee certain rights. The mortgagee has the right to treat a default in payment of common expenses as a default under the mortgage itself. The mortgagee can, in order to preserve its security, pay the outstanding common expenses, interest and expenses referred to in s. 85 and add those expenses to what is outstanding under the mortgage. If the default of the mortgage unit holder continues, eventually the mortgagee (in this case RBC) through Power of Sale proceedings becomes the *de facto* unit owner with an ongoing obligation with respect to the common expenses.

[11] Again, as Lane J. noted, the rationale for:

> "Why the payment of common expenses has been given a former super-priority in the Act is that these expenses are the life blood of the corporation. To the extent that some owners do not pay, the rest will suffer directly. That is why the Act given these expenses priority over individual debts of the owners to their mortgagees. Mortgagees understand this scheme and there is no unfairness to them in enforcing it." (Ibid at para. 16)

Allowable Expenses

[12] In *Metropolitan Toronto Condominium Corp. No. 1385 v. Skyline Executive Properties Inc.* (2005) 197 O.A.C. 145, Justice Doherty, writing on behalf of the panel, had occasion to consider the additional costs allowable in the event a condominium corporation obtains an award for damages or costs against the unit holder pursuant to s. 134(5) of the Condominium Act. As with s. 85, the additional costs are added to the common expenses of the unit holder.

[13] The phraseology of s. 134(5) is different from that of s. 85(1); however, the necessity for the additional costs to be "actual" is akin to the necessity for a causal connection, as referred to in the interpretation of s. 85(1) above.

[14] In the case on appeal, the motions judge had disallowed certain costs as not coming within the ambit of "additional costs". Justice Doherty in his analysis ruled that costs related to the appeal of the original order of the damages and costs were within those costs expended to obtain the order, as those costs were part of the defence and maintenance of the original order. However, His Honour disallowed costs associated with the enforcement of a compliance order. The latter costs were found to be with respect to another legal matter involving the same unit. Justice Doherty reiterated similar to what Justice Lane had stated with respect to the equities at

stake in a condominium that "the section (s. 134(5)) is intended to shift the financial burden of obtaining compliance orders from the condominium corporation, and ultimately the innocent unit holders to the unit owner whose conduct necessitated the obtaining of the order." Ref. para. 40.

[15] Obviously, the sections are interpreted with that principle of fairness to the innocent unit holders in mind, but nevertheless confined to how costs are defined within the particular section. In other words, some costs may not be within the costs contemplated by a section. As referenced, compliance costs are different from obtaining and maintenance costs. The same exercise of differentiating amongst forms or origins of "costs" was observed in *1427814 Ontario Ltd. v. 3697584 Canada Inc.* (2005) 196 O.A.C. 58. The panel distinguished between yet to be incurred costs of litigation arising from the claim by the respondent of an alleged improvident sale or slander of title and "expenses incident to the sale" as contemplated by s. 27 of the Mortgages Act, R.S.O. 1990 c. M. 40.

[16] This defining of the scope of costs allowable by a section of a statute is a jurisdictional necessity. To do otherwise is to open a portal to a claim for unrelated costs.

FACTUAL BACKGROUND AND ANALYSIS

[17] As mentioned above, RBC registered its mortgage against the condominium unit owned jointly by Eftoda and Gilbert May 8, 2000. The unit owners defaulted under the mortgage on June 30, 2010. RBC initiated a claim for the outstanding debt and the usual costs of enforcement. Shortly after the commencement of this claim, the bank proceeded by power of sale.

[18] Judgment was obtained against the unit holders on October 4, 2011. A writ of possession was issued on November 9, 2011. The bank took possession of the unit on March 22, 2012, pursuant to the writ. The original judgment was appealed by the unit owners and has withstood appellate review.

[19] RBC listed the property for sale and ultimately entered into an agreement of purchase and sale with a closing date of July 26, 2012. That closing date has presumably been extended.

[20] In the December before the mortgage default referred to above (i.e. December 2009), the unit holders failed to pay their common expenses. That failure continued in the months that followed. Consequently, the condominium corporation on February 23, 2010, registered a lien pursuant to s. 85 of the Act in the amount of $2,013.01. Subsection 85(6) provides that such a lien can be enforced in the same manner as a mortgage. Therefore, the corporation through its counsel F&D provided the owners with a Notice of Sale under the lien dated April 26, 2010. Because of the ongoing default in payment of the common expenses, the outstanding amount with respect to these expenses had grown to $3,396.21 by the instituting of the Notice of Sale. Interest was charged on this deficit to an amount of $144.93. This interest calculation was based on an interest rate of 18% compounded monthly. This appears to be a particularly high amount, but the interest calculation is not particularly germane to what ensues, aside from the fact that it would be prudent to address this deficit in common expenses as soon as possible. An

administrative fee of $175.00 was charged. Costs were also sought in the amount of $4,043.74. The total sought was $7,759.88.

[21] The corporation, through F&D, also launched an action for possession of the unit on April 14, 2010.

[22] The unit holders, Eftoda and Gilbert, on June 18, 2010, brought a motion for, amongst other things, an extension of time to file their statement of defence and for an assessment of the corporation's legal expenses for registering the certificate of action and issuing the Statement of Claim.

[23] The materials supporting the motion filed by the unit owners, representing themselves, were voluminous. Within these materials, there were letters that the unit owners wrote dated May 5, May 12 and July 27, 2010, challenging the quantum of the legal fees referred to above and requesting a breakdown. F&D complied with this request by sending four invoices that, apparently, F&D had sent to the corporation. The description of the services rendered were quite generic; for example, "preparation and registration of certificate of lien". There was no breakdown as to time and who rendered the services. There were two additional invoices dated June 24, 2010 and June 25, 2010. These latter two invoices had some detail with respect to the services rendered on a particular date, but without any indication of the actual time dissipated or who rendered the services. Prior to the launching of the motion, the unit owners sent F&D an offer to settle, good until May 21, 2010. The arrears and the common expenses were acknowledged for the months of December 2009 through to May 2010 in the amount of $4,087.81. Interest was to be paid in accordance with the Courts of Justice Act, R.S.O. Fees and disbursements would be paid in the amount of $1,200.00. In her correspondence dated May 20, 2010, Gilbert wrote to F&D complaining with respect to the legal fees of the firm based on a substantial indemnity rate for "cookie cutter" work. This was an insightful observation for a layperson.

[24] The responding material of the corporation to the unit owners' motion did not yield any specifics as to the costs or the services rendered by F&D. The original motion was rescheduled from June 24, 2010, to August 6, 2010.

[25] Meanwhile, Kathy Manger, a special collections officer for RBC, emailed Jennifer Serfilippi, a law clerk at F&D, on June 24, 2010, requesting a breakdown of the arrears. The clerk responded by an email dated June 25, 2010, to this request. As another month had gone by and the next month's obligations were almost due, the common expense amount had grown to $4,779.41. Interest had grown accordingly. Administration fees were as before. Legal costs, according to this missive, were $8,358.35. The legal costs had literally doubled since the Notice of Sale of April 26, 2010. The clerk cautioned that the total payout of $14,294.91 was only as valid as of the date of the email (i.e. June 25, 2010). This caution became a repeated mantra every time a request was made of F&D as to a payout figure. The clerk concluded her email with selected quotations from various jurists as to the unit holder Eftoda in other unrelated litigation. The obvious impression to be conveyed was that of a vexatious and difficult litigant. These observations were cavalierly applied to Gilbert as well. The clerk cautioned "the

defendants' conduct in the herein action is likely to be consistent with their conduct in the above case. We are only providing this information to you to impress upon you the importance of settling this matter as soon as possible."

[26] No doubt these gratuitous remarks would add an element of drama to what normally would be a mundane commercial matter. In light of the fact that up until this point the unit holders had really only challenged the calculation of the legal fees of F&D, these remarks were totally uncalled for. Any litigant, no matter their deficiencies, is entitled to challenge legal fees, such a challenge is perfectly legitimate.

[27] In that vein, Brian McClusky of Gowlings, who represented RBC, wrote on July 7, 2010, requesting a copy of the legal accounts. Mr. Deo of F&D responded on July 12, 2010, providing the accounts and enclosing again a copy of his clerk's email "in order to alert you to the well known conduct of the owners" (Gilbert obviously tarred by association with Eftoda). Ah, the drama is maintained. The actual invoices are somewhat rich. Legal fees of $650.00 to prepare and register the Certificate of Lien is a bit high given that it was probably, as Gilbert described, "a cookie cutter" service.

[28] The invoice of April 26, 2010, of $1,150.00 for preparation and issuance of Notice of Sale does present as excessive. The document is obviously producible through the relevant software and probably took all of ten minutes to produce. The same could be said of its "issuance".

[29] Similar comments could be made with respect to the invoice of April 14, 2010, with respect to the preparation and issuance of the Statement of Claim. $975.00 for filling in the blanks in the software program appears excessive.

[30] The most detail is provided in the actual invoice of June 24, 2010. A fee of $3,703.50 is claimed for various activities with no indication how much time is consumed or by whom for each activity on the dates enumerated.

[31] In that invoice, one notes that on May 20, 2010, "consider and confirm status of owner and strategy accordingly." Similarly, on June 21, 2010, someone met with a member of the firm B. Chaplick, "conversations were had with a client (about what?)...Obtain instructions and discuss potential courses of action (keep in mind, this was a motion essentially to challenge the fees of F&D)...Advise client that owners are known to be outrageously litigious (obviously someone within F&D is quite spooked by this challenge to their fees)...review numerous motions of owner (there is actually only one at this time), and instructions to staff." (Who are the staff - are we talking about the office cleaners, the legal assistants?)(emphasis added)

[32] On June 22, 2010, there was effort directed to the preparation of a factum and book of authorities. One wonders, what were the pithy legal issues? The owners wanted an extension of time to file their pleadings and to challenge the legal fees.

[33] On June 24, 2010, someone again was meeting with B. Chaplick and the law clerk. "Instructions were given to staff"- what were these instructions, were they to batten down the

hatches or man the guns or what? The law clerk must have not gleaned much from the conversation with the unnamed person because an email was sent to her as to the status of the litigation.

[34] All of this hysteria-non specific-activity for $3,703.50.

[35] The account for June 25, 2010, (the day after the last account) reads: "Receipt and review of email from Royal Bank of Canada, Confirming status of matter of with B. Chaplick, Confirming status of account with management. Preparing and sending reply to Royal Bank of Canada with status update. Our Fee $200". Who actually performed these steps? There is no indication as to the qualifications of this unnamed person or how much time they spent in these activities.

[36] In any event a formal letter from F&D, dated July 20, 2012, advised RBC that a payment of $15,071.75 was required. The mantra for the payout being only good for that day was repeated.

[37] RBC couriered to F&D July 26, 2010 the $15,071.75 representing "the total arrears of common expenses and legal fees owing to the above property". Additionally, RBC advised it would be making the necessary common expense fees from henceforth. Naturally, RBC requested that the lien pursuant to s. 85(7) be discharged. The lien has never been discharged by F&D, notwithstanding the mandatory language of the section and the lien itself.

[38] The rationale for this failure apparently was that F&D had incurred additional legal costs. Mr. Chaplick of F&D wrote September 14, 2010 that the firm was "forced to respond to a frivolous motion". The motion with respect to costs being assessed was not actually that frivolous. Somehow Mr. Chaplick believed that the unit owners had to ask F&D to consent to an assessment of their costs. Surely F&D could have done that without being asked. The firm appeared on an adjournment August 6, 2010 to October 15, 2010. Mr. Chaplick reiterated how they were forced to deal with an effort by the owners to consolidate the actions for possession of other actions. Obviously it had not dawned on F&D that with RBC having paid their common expense arrears and related expenses, and having committed itself to paying the ongoing common expense, the right of the condominium corporation to pursue this matter pursuant to s. 85(7) was over. RBC had taken over responsibility for the unit. A Notice of Discontinuance should have been filed when RBC paid, not July 3, 2012 (two years later). A Notice of Discontinuance filed at that point would have triggered the potential for costs consequences pursuant to *Rule* 23.05(i). Practically speaking, the "costs" claimed by the condominium could have been dealt with in a timely manner without further expense.

[39] Mr. Chaplick was of the view that the further ongoing efforts of F&D as misguided as they were, were part of the reasonable legal costs and reasonable expenses incurred by the corporation.

[40] The action by the condominium and the motion by the former owners meandered along through the courts for the next two years. There were delays occasioned by the capacity issues on the part of Gilbert. Mr. Chaplick wrote to the owners January 28, 2011, offering to settle the

matter on the basis that the plaintiff corporation would discontinue the action (the corporation had no action as RBC had paid off the lien), the owners were to abandon their motion on a without costs basis, the corporation would discharge its lien (which it should have done in July 2010), and there was to be a full and final release executed by the owners which would estop the owners from making any subsequent claim as against the condominium corporation, the law firm and its employees with respect to this matter, and estop the owners from pursuing assessing of the quantum of the legal costs incurred by the corporation in the collection or attempted collection of the defendant's default of common expenses.

[41] In order to impress the owners with the largesse demonstrated in this correspondence, Mr. Chaplick proceeded to point out that the offer had a value of over $9,000.00 in legal costs, which in itself was a 50% reduction of the actual costs. No mention was made of the legal costs received from RBC. This concluding comment was a manifestation of considerable audacity.

[42] Needless to say, the then former owners did not rush out and accept the offer.

[43] On May 7, 2012, the Court Registrar issued a Notice of Dismissal for the delay in the condominium's action. F&D on behalf of the corporation requested a status hearing. That hearing was scheduled for June 27, 2012. One wonders what F&D would have stated at this status hearing in an action which should have been discontinued by them two years earlier.

[44] On June 26, 2012, Mr. Chaplick wrote to the former owners "as a courtesy" to advise that they would be noted in default for having failed to file a statement of defence to the corporation's claim for possession. F&D would then proceed to claim their unpaid costs and expenses without further notice. Why would counsel have made these comments? Two years previously RBC had effectively resolved the common expense issue, RBC had obtained possession of the units through power of sale proceedings. The condominium corporation had no right to do what Mr. Chaplick threatened.

[45] Amazingly enough, F&D was able to convince RBC to pay a further $12,651.16 towards their legal costs. Mr. Kukla of Gowlings, counsel for RBC, on May 14, 2012 again requested a detailed breakdown of all the costs. The $12,651.16 was requested along with the usual mantra that the sum was not guaranteed beyond May 15, 2012 (the day after the email). This time, the invoices provided for: October 31, 2010, for fees $,5280.00; November 23, 2010, for fees of $481.50; December 31, 2010, for fees of $1,335.00; for January 31, 2011, for fees of $1,605.00; for February 28, 2011, for fees of $180.00; for June 30, 2011, for fees of $1,170.00; for August 31, 2011, for fees of $545.00; for October 31, 2011, for fees of $65.00; for May 14, 2012, for fees of $190.00. These invoices contained absolutely no detail as to what services were actually done. F&D had discovered "solicitor/client privilege" and had redacted all details. One notes that they were not so handicapped in 2010.

[46] As noted previously, the lien was not discharged as "quelle surprise", there were more, no doubt, non-specific services as a consequence of solicitor/client privilege which were incurred after the latest top up by RBC.

[47] RBC has, as evidenced by this motion, finally turned off the tap and seeks a discharge of the original lien.

CONCLUSION

[48] The lien pursuant to s.85 of the *Act* should have been discharged with the payment by RBC and assumption of common expenses feels. Whatever legal efforts were extended by F&D since then have been to avoid having assessed their original fees purportedly expended for the collection of the common expense arrears. Those services as enumerated in the various invoices provided in June and July, 2010, were not "reasonable" costs in the meaning of s.85. They were non specific, products of F&D's hysteria in dealing with a difficult litigant. Those fees which RBC discharged with the its payment July 26, 2010 fees should be assessed.

[49] The fees of F&D beyond July 26, 2010 are not capable of being considered "reasonable" as there is no description or breakdown time wise or detail wise as to what actually was done. If the firm seeks to hide behind its newfound zeal for "solicitor/client privilege", so be it, but there is no basis for assessing whether these services are reasonable or were for the purpose of collecting the common expense arrears.

[50] Basically what happened after July 26, 2010 appears to have been avoidance by F&D of an assessment, the basis for the actual action had evaporated. The costs claimed were not costs contemplated by s. 85 of the *Act*. The prolongation of a lien discharge which was mandated by s. 85(7), was not justifiable. F&D were not only flogging a dead horse, they were acting as if it would go around the track.

[51] If F&D pursues collection of its fees against the condominium corporation, innocent unit holders will be penalized but not because of the former owners in this matter, but because of the irresponsible behaviour on the part of F&D. That is not the equity that Justices Lane and Doherty spoke of being protected under the statute.

ORDER

[52] For all of the above reasons, it is ordered: (1) that the lien registered February 23, 2010, against the property be discharged and deleted from the title to the property; (2) the condominium corporation shall issue a status certificate to the purchaser of the unit in question pursuant to the Agreement of Purchase and Sale dated July 9, 2012, confirming that any common expenses predating the sale and relating to the property are no longer applicable and will not be shown on a status certificate as relating to the property.

[53] This court declares that the expenses incurred by the condominium corporation based on the efforts of Fine and Deo LLP in dealing with a motion for amongst other things, an assessment of their fees by the former owners, and the pursuit of a claim for possession are *not* the proper subject of a lien pursuant to s. 85 of the *Act*.

[54] This court orders that the expenses claimed on behalf of the condominium corporation and addressed by Royal Bank of Canada July 26, 2010 and May 15, 2012 are to be assessed.

[55] If counsel cannot agree as to the level and quantum of legal costs with respect to this application, submissions are to be exchanged and filed with the court within 45 days of the release of this judgment.

[56] Fine and Deo are to consider whether pursuant to *Rule* 57.07, Fine and Deo should refund or repay money paid by the condominium corporation in the pursuit of this particular lien and should Fine and Deo be responsible for any costs found payable to RBC. Fine and Deo are invited to communicate with the trial coordinator to establish a convenient date before this court and suitable amount of time to make submissions in this regard.

WHITTEN J.

Released: October 17, 2012

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