CITATION: Simcoe Vacant Land Condo. Corp. No. 272 v. Blue Shores Developments Ltd., 2014 ONSC 187
COURT FILE NO.: CV-12-462334
DATE: 20140109

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Simcoe Vacant Land Condominium No. 272, Simcoe Vacant Land Condominium No. 299, Simcoe Vacant Land Condominium No. 312, and Simcoe Vacant Land Condominium No. 321	)	*Jonathan Fine and Benjamin Rutherford*, for the Applicants
Applicants	)	
– and –	)	*Stephen Schwartz*, for the Respondent, Blue Shores Developments Ltd.
Blue Shores Developments Ltd. and Duca Financial Services Credit Union Ltd.	)	*Reeva Finkel*, for the Respondent, Duca Financial Services Credit Union Ltd.
Respondents	)	
	)	**HEARD:** November 4, 2013

MORGAN J.

[1] This is an application claiming breach of trust and oppression against the developer of a residential project in Collingwood, Ontario. The Applicants seek comprehensive relief in the form of a declaration of ownership of a clubhouse property, a declaration that a mortgage registered on title to that clubhouse property is void as against the Applicants, an accounting of monies collected as membership fees and amounts spent operating the clubhouse, and other related orders.

[2] Applicants' counsel have invested much effort researching the law and making thorough submissions on developments in the law of fiduciary obligations, constructive trust and oppression, all in an effort to demonstrate that a developer of a condominium project can in the

right circumstances be considered a trustee of portions of the project and that the condominium corporations that represent the existing purchasers/owners of the condominiums are the beneficiaries of that trust. I commend them for putting forward a sophisticated brief that reflects the current state of legal thinking on how a developer of property might take on fiduciary obligations to purchasers, as well as on the many ways in which a trustee of property must restrict itself in its dealings for the benefit of the beneficiaries and account to those beneficiaries for its financial dealings with the trust property.

[3] Despite this effort, the record contains insufficient evidence to support the Applicants' legal theory. The contractual and disclosure documents that accompanied the sale of the condominium units establish certain contractual rights and obligations, but do not establish a trust relationship with respect to the clubhouse property in issue. Furthermore, there is no evidence of conduct by the developer that would change its relationship with the purchasers and the condominium corporations regarding the clubhouse or that would constitute a breach of the developer's well-documented contractual obligations.

[4] There is also no evidence of oppressive conduct on the developer's part. In adhering strictly to the contractual rights and obligations between itself and the condominium purchasers, the developer cannot be said to have done anything that the purchasers did not reasonably expect from the outset. The Applicants appear to be complaining about the fully disclosed terms of the contract, not its breach or the Respondent's unexpectedly technical compliance with those terms, and they are not in a position to seek redress for that complaint.

I. Conveyance of the Clubhouse

[5] The project in Collingwood was developed by the Defendant, Blue Shores Developments Ltd. ("Blue Shores"). It is composed of several hundred dwellings making up the four condominium corporations that are the Applicants herein, as well as a community clubhouse with swimming pools, tennis courts, meeting rooms, a kitchen, and assorted recreational facilities (the "Clubhouse"). The project also comprises a fifth condominium corporation which contains dock slips and a marina on Georgian Bay, as well as vacant future development lands abutting the built part of the project.

[6] Blue Shores built the Clubhouse for membership and use by condominium owners and their guests. The Clubhouse, its ownership, and its future conveyance were fully described in the developer's Disclosure Statements. Article 4.3 of the Disclosure Statements states:

> Ownership of the Clubhouse Facilities unit shall ultimately be transferred to the Condominiums by the Declarant (or any successor or assignee thereof for total consideration of Two dollars ($2.00). Such conveyance shall occur within one hundred and twenty (120) days following the date that the Declarant (or any successor or assignee thereof) is no longer the registered owner of any lands within the project (including the abutting lands and the Future Development

> Lands) or such earlier time as the Declarant may determine in its sole and unfettered discretion (the Clubhouse Transfer Date).

[7] The Clubhouse has to date not been conveyed to the Applicants. Blue Shores explains that this is because it has not yet reached the point where it "is no longer the registered owner of any lands within the project", as stipulated in art. 4.3 of the Disclosure Statements. Blue Shores still owns 7 condominium units that it has not been able to sell, as well as the abutting lands that are set aside for future development. It also still owns 31 dock slips in the marina which remain unsold.

[8] The Disclosure Statements make it clear that Blue Shores kept for itself the ownership of the Clubhouse until all of its interest in the balance of the project and abutting property was sold. The reason for this has always been obvious to all concerned: the Clubhouse, with its social, athletic, and other recreational facilities, is an essential amenity in the marketing of the project. Ensuring that it was properly operated and maintained until the last of Blue Shore's property is sold is important to Blue Shores as developer of the entire project.

[9] Counsel for the Applicants submits that the Disclosure Statements are ambiguous as to what precisely is included in the "project" – specifically, whether all of the abutting lands and the marina and dock slips were really intended to be part of the lands that must be sold before the Clubhouse is conveyed to the Applicants. This ambiguity, counsel submits, should be read against Blue Shores, who should not be permitted to delay the conveyance of the Clubhouse based on its reading of an unclear provision in the Disclosure Statements.

[10] Frankly, I do not see the ambiguity. Article 4.3 of the Disclosure Statements, quoted in full above, says that the conveyance of the Clubhouse will take place within 120 days of Blue Shores selling all of the lands in the project. For greater certainty, article 4.3 explicitly adds: "(including the abutting lands and the Future Development Lands)".That parenthetical clarification needs no further clarification. To say that it is ambiguous is but an imaginative form of advocacy.

[11] The abutting lands (i.e. the marina, etc.) and the lands reserved for future development are certainly within the scope of the lands that are referenced in art. 4.3 of the Disclosure Statements. There is nothing in any of the Disclosure Statements or other condominium documents to suggest otherwise.

[12] Blue Shores does not deny that it will be obliged to convey the Clubhouse to the Applicants as soon as it has sold its remaining interest in the property. In his factum, counsel for Blue Shores states,

> Blue Shores intends to comply with paragraph 4.3 of the Disclosure Statement. It will transfer ownership of the Clubhouse to the Applicants when it no longer retains ownership of any of the Remaining Lands.

[13] At the hearing of the Application, counsel for Blue Shores advised that his client will not include the abutting lands or future development lands in the lands that must first be sold, even though it is entitled to include them. Counsel states that it is Blue Shores' intention to convey the Clubhouse to the Applicants when the remaining seven condominium units are sold and those transactions have closed.

[14] The Applicants acknowledge that according to the Disclosure Statement, Blue Shores is only obliged to convey the Clubhouse to them 120 days after all of the units are sold. They contend, however, that this Disclosure Statement obligation is, in effect, an executory contract and that the conveyance has already been paid for as part of each unit owner's purchase price.

[15] They further argue that it has been ten years since the development project was commenced by Blue Shores, and the fact that there are seven unsold units demonstrates that Blue Shores has not made adequate efforts to sell these last remaining units. The Applicants submit that they are therefore in a position to require specific performance of the executory contract and that Blue Shores must now convey the Clubhouse to them.

[16] On cross-examination, Will Walker, the president of Blue Shores, stated that Blue Shores has made every effort to sell the unsold units. The Applicants complain that he described these efforts only in general terms and that his testimony avoided getting into any specific marketing or sales efforts. They contend that there is no reliable evidence in the record as to the efforts that Blue Shores has gone to in order to complete what they consider to be an executory contract to sell off the units and convey the Clubhouse. More specifically, counsel for the Applicants states in his factum that,

> Although Mr. Walker suggested that Blue Shores had done everything possible to sell the remaining lands, he admitted that the instructions to the sales people were not to sell such lands *at any price*. Therefore, Blue Shores has not done everything to sell the remaining unsold lands. [emphasis added]

[17] With respect, the Applicants misinterpret Blue Shore's obligation.

[18] In the first place, I do not read Blue Shore's obligation to convey the Clubhouse at a future time as an executory contract that has already been bought and paid for by the Applicants. The reason that I do not read it that way is that none of the relevant documents say it that way.

[19] If the obligation to convey the Clubhouse is, as the Applicants would have it, an executory contract for the purchase and sale of real property, it would have to be in writing. Section 1(1) of the *Statute of Frauds*, RSO 1990, c S.19, requires that to be the case. The fact that the allegedly executory contract is not written as an executory contract – or as an existing and paid-for contract for the sale of property at all – is therefore fatal to the Applicants' attempt to characterize it as creating an estate or interest in land.

[20] Counsel for the Applicants points out that the standard agreement of purchase and sale for each unit contains a clause in which the purchaser agrees to accept title "subject to the

Condominium Documents", and that the "Condominium Documents" are defined as including the Disclosure Statements. Counsel argues that this effectively incorporates the terms of the Disclosure Statements into each agreement, and that the future conveyance of the Clubhouse is thereby part of each agreement.

[21] I do not agree with this reading of the standard agreement of purchase and sale. It is necessary for the purchasers to acknowledge that title to the unit they are purchasing is "subject to the Condominium Documents", since condominium is a specific and somewhat complicated form of property title which is described in detail in those documents. The purchasers are not buying freehold land, and the nature of their proprietary interest in their unit must be carefully and fully set out in the documentation that accompanies the creation of the condominium.

[22] That, however, does not give the purchasers either legal or equitable title to the Clubhouse. The fact that the purchasers' title is more fully described in the "Condominium Documents" cannot by wholesale reference give each purchaser title to things described in the Condominium Documents that are not part of their unit or, like common elements, "required by the exigencies of condominium ownership" to be part of their unit. *Middlesex Condominium Corp. No. 87 v 600 Talbot Street London Ltd.* (1998), 37 OR (3d) 22, at para 39 (Ont CA).

[23] The purchasers take their title to each unit "subject to the Condominium Documents", which means that the Condominium Documents must actually be read in order to determine their actual impact on title. While the Applicants are correct that the phrase "Condominium Documents" includes the Disclosure Statement, they are incorrect in their interpretation of the impact of that inclusion. As indicated above, article 4.3 of the Disclosure Statement specifically provides that an interest in the Clubhouse is *not* being conveyed with each sale. The Disclosure Statement's incorporation by reference into the agreement of purchase and sale of each unit confirms that each of those agreements excludes the purchase and sale of the Clubhouse.

[24] The agreements of purchase and sale allocate no money to the purchase of the Clubhouse, and contain no requirement that the Clubhouse be conveyed to the Applicants in return for the purchasers' respective purchase prices. Article 4.3 provides that a contract for the purchase of the Clubhouse shall be entered into in the future between the Applicants and Blue Shores, and at that point the Applicants will pay the stipulated purchase price. The purchase price, although nominal, has not yet been paid by the Applicants, as the contract of sale for the Clubhouse has not yet been entered into.

[25] In other words, Blue Shores, as developer, is obliged under the statutorily required Disclosure Statement to contract with the Applicants for the sale of the Clubhouse once all of the units and other property have been sold. The basic terms of that future contract, but not its date, have been described in art. 4.3, but no consideration has flowed and there is no existing executory contract. No equitable title has passed to the Applicants as it would if Blue Shores had actually entered an agreement of purchase and sale of the Clubhouse with the Applicants, and there is therefore nothing on which specific performance might operate in the usual way that it does with agreements to convey real estate.

[26] The case law referenced by counsel for the Applicants does not relate to situations such as that of the Applicants and Blue Shores. In *Skytal Ltd. v Schiber*, [1997] OJ No 2010 (Gen Div), *affirmed on other grounds* 115 OAC 197 (Ont CA), the plaintiff had paid for half of the equity and made half of the mortgage payments on a property registered in the defendants' name. The court found explicitly, at para 3, that, "[i]t was admitted at trial that Skytal was a half-owner of the property." Under those circumstances, and in the face of uncontroverted evidence of co-ownership, it was easy for the court to conclude that a trust relationship existed between the parties. There is no such uncontested evidence of co-ownership here; indeed, the documents in the record show the exact opposite.

[27] Likewise, *York Condominium No. 167 v Newrey Holdings Inc.* (1981) 32 OR (3d) 485 (Ont CA), which found that a trust relationship exists between the developer of a condominium and the condominium corporation under certain circumstances, provides little support for the Applicants' position. At para 15 of *Newrey*, the court reasoned that "as soon as a unit purchaser enters into an agreement of purchase and sale of a unit he becomes the equitable owner of the unit and the interests appurtenant thereto..." What the court had in mind in terms of "interests appurtenant thereto" were the parking spaces which were included as common elements accompanying the sale of each condominium units.

[28] Common elements in a condominium, unlike the Clubhouse, are actually conveyed to the condominium corporation in the present tense, and the purchasers of the condominiums acquire their interest immediately with each agreement of purchase and sale. In *Newrey*, the parking spaces were common elements, and as such were not left to be dealt with in a future contract and future conveyance. It was therefore inevitable that the court would conclude, at para 18, that pending closing the developer, as seller, "has also placed himself in a fiduciary relationship to the unit purchasers not only with respect to their units but also with respect to the interests appurtenant thereto."

[29] The distinction between the Clubhouse and a purchaser's interest in common elements is highlighted by the Court of Appeal's judgment in *Metropolitan Toronto Condominium Corporation No. 1250 v Mastercraft Group Inc.*, 2009 ONCA 584, *leave to appeal denied* 404 NR 398 (SCC). There, the developer attempted to separate the HVAC equipment in the condominium building from the condominium units and to lease this equipment back to the purchasers. Goudge and Epstein JJ.A. characterized the developer's scheme as a breach of fiduciary:

> 38 ...If the HVAC equipment is included in the common elements, the fiduciary duty described in *York Condominium* that is owed to present and prospective unit purchasers extends to that equipment.
>
> 39 If the equipment is properly considered to be fixtures, it is part of the common elements as an interest 'appurtenant to' the property. This appears undisputed by the parties. In our view it is clear that, once installed and operational, this equipment must properly be characterized as fixtures. The

> equipment is affixed to the building by piping, ducting and wiring. The objective is to provide the services of heating, cooling and ventilation that is essential for the building to serve as a residential condominium: see *Stack v T. Eaton Co.*, [1902] OJ No 155 (Ont Div Ct), *per* Meredith C.J. This equipment can only be considered fixtures.
>
> 40 The consequence is that the interests of the unit owners, present and prospective, in preserving the HVAC equipment as part of the common elements had to be protected by the owner once it began selling units. The equipment could not lawfully be separated from the remaining common elements, sold, and then leased back to MTCC 1250, at least not without the consent of the unit owners.

[30] The Clubhouse in issue in this Application is neither a fixture nor a common element of the condominium development. Although the Clubhouse may be an attractive amenity, it is not analogous to the HVAC equipment described by the Court of Appeal as "essential for the building to serve as a residential condominium". Having been specifically excluded from the sale to each unit purchaser by the terms of article 4.3, one cannot impliedly read the Clubhouse into the sale of each unit as a result of its being an essential piece of equipment or a fixture. It is not an item that of necessity is conveyed with the interest in the condominium unit itself.

[31] If the Clubhouse were to be conceived as something that is conveyed to each purchaser as an interest appurtenant to each sale, there would be no future conveyance of property title as set out in art. 4.3. The Clubhouse does not qualify as an interest that is appurtenant to the sale of any one or all of the condominium units, as nothing is conveyed with each sale. The conveyance of the Clubhouse will be in the future, as specifically set out in article 4.3 of the Disclosure Statement (which, to repeat, is one of the "Condominium Documents" that qualifies the nature and extent of each unit owner's title). No interest in the Clubhouse is transferred with the signing of each agreement of purchase and sale or with the conveyance of title to the units to each of the purchasers.

[32] I agree that Blue Shores, as developer, is obliged to exercise good faith in fulfilling the terms set out in the Disclosure Statement, which includes its efforts to sell the balance of the units. The obligation to make good faith efforts in selling the other units is contained in section 78(1) of the *Condominium Act, 1998*, SO 1998, c 19, which deems every agreement of sale to contain a covenant by the declarant/seller to "take all reasonable steps to sell the other residential units included in the property without delay..."

[33] If Blue Shores were found to be making no or substandard efforts to sell the remaining units in order to avoid its future obligation to convey the Clubhouse, the Applicants (or, perhaps, the condominium purchasers) might then have a remedy. After all, if there is a statutory duty there must be a corresponding right; and if there is a right there must be a corresponding remedy. However, on the state of the record before me there is no reason to contemplate who might be in a position to seek that remedy or what that remedy might be.

[34] The Applicants have incorrectly reversed the evidentiary burden in putting forth their claim. Counsel for the Applicants asked Mr. Walker to describe the efforts that Blue Shores has made in marketing the units. Mr. Walker answered the question, although he was obviously impatient with its open-ended nature. His answer sounds somewhat flippant, but that can be chalked up to the fact that cross-examination on a pending motion is not a context in which he could possibly detail ten years' worth of project marketing. At q. 117, Mr. Walker described Blue Shores' sales efforts in general:

> Everything we possibly can to sell them. Maybe you're interested in buying one? Reduced prices, increased value, redesign, greatly reduced prices, boat slips, hired outside sales people, we have our own sales people there twenty four/seven. We'd like nothing better than to turn over the clubhouse and have all the land gone. We'd do it tomorrow.

[35] When asked in the very next follow-up question whether these efforts included an instruction to sales staff to sell the units "at any price", Mr. Walker answered in the negative.

[36] While the Applicants contend that Blue Shores has not provided evidence of its good faith efforts, it would be more accurate to say that the Applicants have provided no evidence suggesting a lack of good faith.

[37] What the record shows is that of over 200 units in the project, 7 remain unsold. The Applicants have produced nothing that suggests that this is a sign of poor marketing. No comparisons to the pace of sales of other local developments have been put before the court, no marketing experts have opined on the progress of the Blue Shores sales or the quality of its marketing efforts, no comparative pricing has been submitted, no comparative advertising has been included as an exhibit, no evidence has been put forward that Blue Shores has ever turned away or discouraged a sale, etc.

[38] On the record presented by the Applicants, I have no way of knowing whether Blue Shores has been remiss in its sales efforts or has been the best selling developer in the Collingwood area. It is Mr. Walker's obligation on cross-examination to answer a question in a reasonable way, which in my view he has done; if he sounded exasperated by the question put to him – asking him to fill the Applicants' evidentiary void by describing years of sales and marketing efforts – that is understandable. It is not for Mr. Walker, as a representative of a Respondent, to do the Applicants' market research and to make their case.

[39] Furthermore, in conceding that Blue Shores had not instructed its sales people to sell the remaining units "at any price", Mr. Walker revealed no smoking gun. There is nothing in art. 4.3 of the Disclosure Statement, or in any other document contained in the record, which would suggest that Blue Shores had any such obligation. It is impossible to believe that any real estate developer would even contemplate that kind of term, or that any purchaser would expect it. For the court to infer such a calamitous obligation would be to assume that Blue Shores is an

economically irrational actor. Nothing that I have seen would lead me to believe that I should perceive Blue Shores in that way.

[40] In short, the requirement to convey the Clubhouse for consideration in the future is an obligation that Blue Shores will have in the future. It is not an executory contract which entitles the Applicants, or any of the unit purchasers, to equitable title and the equitable remedy of specific performance. That is not what any document says because it is not what the Applicants, or any of the individual condominium purchasers, bargained for.

[41] In any case, there has been no breach by Blue Shores of the obligation regarding conveyance of the Clubhouse set out in article 4.3 of the Disclosure Statement. The condition under which Blue Shores will have to convey the Clubhouse has not yet come to pass. Moreover, the Applicants have not established that this is due to any lack of good faith sales efforts by Blue Shores. Until all of the remaining property in the project has been sold, Blue Shores retains the right of full ownership of the Clubhouse.

II. Mortgaging the Clubhouse

[42] On November 20, 2009, Blue Shores granted a mortgage to the Respondent, Duca Financial Services Credit Union Ltd. ("Duca"), in the principal amount of $1,000,000. The Duca mortgage was registered against title to the Clubhouse. The Applicants claim that the registration of this mortgage, and the use of the unit owners' membership dues by Blue Shores in servicing the payments on this mortgage, has been done without their consent and in violation of their rights.

[43] The Applicants make numerous allegations about the wrongfulness of the Duca mortgage, which go on for many pages in their written submissions. The gist of these are summed up in paragraphs 46 and 47 of their factum, as follows:

> 46. Despite such communications [between the lawyers for Blue Shores and the lawyers for Duca]:
>
> a. at no time prior to the advance of the Duca Mortgage on November 20, 2009, did Chaitons [i.e. the lawyers for Blue Shores] advise Mr. Smith [i.e. the lawyer for Duca] of the Conveyance Obligation; and,
>
> b. Mr. Smith saw no reason to ask Chaitons if there was anything in the disclosure statements that might prejudice the Duca Mortgage;
>
> c. Mr. Smith's file contains no legal research and he admitted on cross-examination that he did no legal research with respect to this file.
>
> 47. Although Duca and its lawyer were unaware of the Conveyance Obligation until after the mortgage advance, prior to the advance of the Duca Mortgage on November 20, 2009:

a. Duca knew that the purpose of the Clubhouse Facilities was to provide recreational facilities for the four condominium corporations and their unit owners;

b. Duca never reviewed a disclosure statement with respect to this project and never considered reviewing such a disclosure statement;

c. Blue shores never advised Duca of any sort of trust arrangement or obligation to convey the Clubhouse Facilities to the condominium corporations.

[44] Many of the Applicants' allegations – of which the paragraphs quoted above are but a small sample – appear aimed at the lawyering by the Respondents' respective solicitors rather than at the rights and obligations of the parties. Contrary to the suggestion contained in the Applicants' subparagraphs 46a through c above, the pertinent question is not whether Duca's lawyer should have reviewed the Disclosure Statement or Blue Shores' lawyer should have provided or explained it to Duca's lawyer; rather, it is whether the contents of the Disclosure Statement impacted on the mortgagor and mortgagee's rights.

[45] The same is true with respect to whether Duca's lawyer did any legal research. The question is not whether or not any case law was read; rather, the question is whether the relevant documents contained facts that would support whatever legal theory might be devised by researching the law. Needless to say, the purpose here is to ascertain whether any of the parties' rights have been violated, and not to engage in a 'best practices' critique of the solicitors.

[46] Subparagraph 47a of the Applicants' factum, which asserts that Duca knew of the Clubhouse's use, is, despite its accusatory tone, an entirely banal observation. It amounts to little more than a statement that Duca knew that a recreational facility was to be used as a recreational facility.

[47] Subparagraphs 47b and c of the Applicants' factum, on the other hand, contain the potentially more potent observations that Duca never reviewed the Disclosure Statement and Blue Shores never advised Duca of any sort of trust arrangement. Counsel for the Applicants cites *XDG Ltd. V 1099606 Ontario Ltd.*, 2002 CarswellOnt 4535, at para 55 (SCJ) for the proposition that Duca, like the lender in *XDG*, "is a sophisticated financial institution that well knows the necessity of a due diligence investigation." Counsel for the Applicants also relies on *CIBC Mortgage Corporation v Quassa*, 1996 CarswellNWT 19, at para 16 (NWT SC) for the view that "the purchaser [or lender] bears the obligation to make reasonable inquiries into the state of title." He submits that Duca had enough knowledge about the Clubhouse that as a prudent lender it would have been put on its inquiry with respect to the Applicants' rights.

[48] Given the state of the evidence, however, the Applicants' observations regarding due diligence do not undermine Duca's mortgage. Had Duca reviewed the Disclosure Statement it would have seen no trust arrangement. There was none to be seen in any of the documentation, whether or not it was reviewed in the course of the mortgage transaction. As a sophisticated

lender, Duca would doubtless have concluded that while there is an obligation on Blue Shores to convey the Clubhouse at some point in the future, the Applicants have no proprietary or equitable interest in it at present and that Blue Shores is at liberty to mortgage the Clubhouse property.

[49] All of the Applicants' allegations with respect to the validity or priority of the Duca mortgage are answered by the conclusion reached in Part I of this judgment: Blue Shores is not a trustee of the Clubhouse. Blue Shores and its lawyers could only be faulted for failing to disclose the fact that it owns the Clubhouse as trustee for the Applicants, and Duca's lawyer could only be faulted for failing to do the due diligence or legal research that it would take to discover the fact that Blue Shores is a trustee, if it were a fact. It is not, and therefore all of the Applicants' protestations are of no moment.

[50] There is no prohibition contained in any Disclosure Statement, agreement with any purchaser or an of the Applicants, or any other relevant document, against Blue Shores entering into a mortgage for the Clubhouse or Duca registering that mortgage against title to the Clubhouse. In fact, Blue Shores has owned the Clubhouse subject to a mortgage since inception of the project, well prior to any sales to condominium purchasers and the creation of the Applicant corporations. When Blue Shores purchased the subject property in 2003, the acquisition was financed by a mortgage loan from HSBC Bank for $6 million which was registered on June 18, 2003. The principal amount of the HSBC mortgage was increased on July 18, 2004 to $17 million.

[51] The HSBC mortgage has been discharged. What appears on title now is the $1 million mortgage in favour of Duca, which was itself renewed in November 2011. While Duca may have been unaware of the terms of article 4. 3 of the Disclosure Statement at the time it first placed its mortgage in 2009, it was certainly aware of the future conveyance obligation in 2011 but nevertheless determined that Blue Shores was in a position to grant the mortgage without the consent of the Applicants. In that, Duca was correct.

[52] Counsel for the Applicants argued at the hearing, and submits in his factum, that the remedies available to Duca in case of Blue Shores' default under the mortgage potentially clash with the right of the Applicants to a future conveyance of the Clubhouse. As counsel puts it at paragraphs 51 and 52 of his factum:

> 51. [Duca and Blue Shores and their respective lawyers] admit that the remedies available to Duca in case of default under the Duca Mortgage include power of sale and foreclosure pursuant to which, title to the Clubhouse Facilities could be transferred to some person or entity other than the condominium corporations.
>
> 52. It is precisely this scenario which concerns the condominium corporations and is in part the impetus for this application.

[53] Both Duca and Blue Shores respond by submitting that the question of what happens if Blue Shores defaults is a speculative one that need not be answered. I agree. As the Federal Court most recently put it in *Page v Mulcair*, 2013 FC 402, at para 61, "[i]n order to avoid the issue of mootness, there must be a live controversy both when the proceeding is commenced, and also at the time the Court is called upon to make a decision. As a matter of general policy, a court may decline to hear a case which raises merely hypothetical or abstract questions."

[54] Since the Applicants have no presently enforceable property interest or equitable right in the Clubhouse, they do not have the ability to block or to pre-empt the Duca mortgage. Whether their future contractual right as set out in article 4.3 of the Disclosure Statement would be undermined by a default by Blue Shores is not an active *lis* that is before the court. There is no claim or suggestion that Blue Shores has defaulted or that Duca is exercising its mortgage remedies, and no hint in the evidence that a default is likely. Neither the rights of Duca nor those of the Applicants should be decided in this type of vacuum.

[55] In paragraph 20 of the Blue Shores factum, it states: "The Duca Mortgage will be discharged from title prior to or at the time Blue Shores transfers ownership of the Clubhouse to the Applicants." I take that to mean that the conveyance of the Clubhouse will take place within 120 days of the sale of the last remaining unit, which will be pursued in good faith, and that the Duca Mortgage will be discharged prior to or at the time of the conveyance. There has been no evidence presented to me which would cast doubt on that statement.

[56] Finally, in paragraph 43 of their factum the Applicants submit that, "[t]here was also no disclosure that the unit purchasers would be servicing the Duca Mortgage through contributions to the Clubhouse Facilities' fees." The Applicants augment this allegation by pointing out that in approving the mortgage, Duca asked to examine the Clubhouse's dues-paying membership list.

[57] Blue Shores responds in paragraph 54g of its factum that, "there is no evidence that Blue Shores is causing unit owners and the Applicants to pay all or a portion of the amounts due and owing under the Duca Mortgage on an ongoing basis." Indeed, the mortgage payments are made by Blue Shores to Duca, not by the Applicants or the condominium owners. There is no flow-through mechanism by which the condominium owners' Clubhouse membership fees is transferred to Duca in the form of mortgage payments.

[58] Since money is the most fungible of commodities, the allegation that the membership fees are servicing the Duca mortgage is essentially meaningless. Any money charged by Blue Shores to anyone for anything in effect contributes to Blue Shores paying its bills in the ordinary course, including the servicing of the Duca mortgage.

[59] Counsel for Duca concedes that Duca asked to examine the Clubhouse's membership as part of its mortgage approval process, but she submits that the economic prudence which motivated that review does not signal that the unit owners/members of the Clubhouse are servicing the mortgage. Rather, she characterizes it as similar to the way a bank financing a gym might examine the membership as one data point in evaluating the mortgagor's cash flow. There

is nothing unusual about such a step, and nothing in it impinges on any rights of the Applicants or the unit owners.

[60] The Applicants may, and do, claim that they or the condominium owners have been overcharged for membership fees in the Clubhouse. That claim will be discussed in Part III below. However, the allegation that the Clubhouse members are "servicing" the Duca mortgage does not conform to either legal or economic reality.

[61] To summarize, there is no prohibition against Blue Shores mortgaging the Clubhouse, and there is nothing in the record that would undermine the enforceability or priority of the Duca mortgage. It does not infringe any rights of the Applicants.

III. The Clubhouse fees

[62] The Applicants submit that they have been charged more for Clubhouse fees by Blue Shores than is permitted under the relevant documents. They seek an accounting of all funds paid by way of membership fees, and expenses incurred by Blue Shores in operating the Clubhouse, since inception.

[63] The documents governing the fees and operation of the Clubhouse are a combination of the Disclosure Statements and the Easement and Cost Sharing Agreement between the Applicants and Blue Shores (the "EACSA"). Like the Disclosure Statements, the EACSA was registered against title to each of the Applicants' plan of condominium. Each purchaser of a condominium unit received a copy of both and was aware of their terms, including the provisions with respect to the management fees for the Clubhouse.

[64] The EACSA is an agreement for the "the mutual use, provision or maintenance or the cost-sharing of facilities or services", as described in section 113 of the *Condominium Act*. Pursuant to section 113, a legal challenge to the terms of the EACSA would have had to be commenced within 12 months of the turnover meeting for any of the Applicant condominium corporations, the first of which took place on April 24, 2004 and the last of which took place on March 3, 2010. The present Application was commenced after March 3, 2011.

[65] Accordingly, any claim relating to the Clubhouse fees charged by Blue Shores must be framed as a claim for breach of the provisions of the EACSA rather than as a challenge to the terms of the EASCA itself.

[66] The Clubhouse opened for operations in 2006, with an initial membership fee of $100 per month as properly disclosed in the Disclosure Statements for the condominiums. Under article 4.4 of the EASCA, "the Declarant [i.e. Blue Shores] shall retain ownership of the clubhouse facilities unit and shall be responsible for the management, operation and control of same." Blue Shores had the right under article 6.01 of the EASCA and under the Disclosure Statements to operate the Clubhouse and to increase the membership fee per condominium unit by up to 10% each year.

[67] The current membership fee for the Clubhouse is $128.26 per month per condominium unit. The Applicants contend that the fees have been calculated to ensure that the Clubhouse is a profitable enterprise for Blue Shores given the operating expenses and mortgage payments that it carries. Blue Shores responds that the annual Clubhouse fees have been calculated without reference to the Clubhouse's expenses or mortgage payments.

[68] In any case, it is clear as a matter of simple mathematics that the current membership fee is well within amount permitted to be charged under the Disclosure Statements and the EASCA – i.e. it is substantially less than the initial $100 per month fee plus 10% annual increases since 2006.

[69] The Applicants' submissions regarding the membership fees go on at some length, and include some rather elaborate arguments about whether Blue Shores is really an "owner" as defined in the EACSA, since it is the "owners" that are made collectively responsible for the shared facilities. These arguments certainly showcase the rhetorical dexterity of Applicants' counsel, but are of no significance to the actual matters at issue. As indicated below, article 6.01 of the EACSA makes it clear that the Declarant – i.e. Blue Shores – is responsible for operating and maintaining the Clubhouse.

[70] I would emphasize that the phrase "Declarant" as used in article 6.01 and elsewhere refers to Blue Shores and only to Blue Shores. It is the developer that declares the condominium before turning it over to the condominium corporation.

[71] Applicants' counsel's suggests that the "Declarant" referred to in article 6.01 and elsewhere in the EACSA might not describe Blue Shores, arguing that a typographical error in which a company name entirely unrelated to this condominium development – CCC Balsam Ltd. – was mistakenly inserted instead of the name Blue Shores into one article of the EACSA, should be read *contra proferentem* against Blue Shores. Applicants' counsel also puts forward the theory that once the condominium declarations have been registered the "Declarant" is, strictly speaking, no longer a declarant.

[72] With due respect to the ingenuity behind these arguments, the goal of the exercise here is to engage in contract interpretation, not legal gymnastics, and to make sense of the documents, not nonsense. The only logical way to read the Disclosure Statements and EACSA is that Blue Shores is the "Declarant". No one else even remotely fits that description. The Declarant, Blue Shores, owns, operates and maintains the Clubhouse.

[73] The Applicants' more serious arguments about the membership fees are essentially based on two propositions: a) the Clubhouse is supposed to be run on a non-profit basis, and b) Blue Shores has not provided a proper budget or accounting of the costs of the Clubhouse. Each of these will be addressed in turn.

[74] The argument that the Clubhouse must not be a profit-making operation is based not on any operational provision of the EASCA, but rather on one of the recitals in the preambular

portion of the EASCA. Specifically, Recital E states that the overall agreement with respect to the shared facilities – which include the Clubhouse – is being entered on a non-profit basis. The Applicants take this to mean that each item whose management and operation is detailed in the EASCA must be accounted for in a way that ensures that it is being managed and operated without profit.

[75] For its part, Blue Shores submits that the meaning of Recital E is merely that the EASCA itself was entered into by the Applicants and Blue Shores without any monetary consideration being exchanged – literally, on a non-profit basis. It contends that any given operation or shared facility addressed by the EASCA is governed by the specific operational terms contained therein and is not modified (and certainly not wholly countered and undermined) by this one phrase in Recital E.

[76] While the reason for including the phrase "non-profit" in one of the recitals is not entirely clear to me, it is only Blue Shore's interpretation that makes the EASCA hold together as a logical agreement. The Applicant's interpretation of the "non-profit" reference in Recital E does not account for the operative provisions of that agreement that provide specific mechanics for the charges to be levied regarding the Clubhouse facilities. It would render the EASCA needlessly illogical.

[77] It goes almost without say that it is the court's task to consider the meaning of any words in a recital or anywhere else in the contract in light of the whole agreement and in the context in which it was made. *Ventras, Inc. v Sunrise Senior Living Real Estate Investment Trust*, 2007 ONCA 205 (Ont CA). Certainly, an interpretation that allows all of the provisions of a complex agreement to stand together as a logical whole is to be preferred over one that presents an insurmountable internal contradiction. At the very least, the clear and unambiguous terms of the Clubhouse membership fee calculation must be construed in their ordinary meaning, and the parties must be taken to have intended the self-evident consequences of those provisions. *Dumbrell v Regional Group of Companies* (2007), 85 OR (3d) 616 (Ont CA).

[78] Under article 6.01 of the EASCA, each of the Applicants are required to pay an Allocated Cost Contribution ("ACC") to Blue Shores in respect of its operation and management of the Clubhouse. The ACC is defined in very specific terms by article 6.01, as follows:

> The Allocated Cost Contribution shall mean the total, aggregated cost contribution to be paid monthly be each Corporation to the Declarant for the use and enjoyment of the Clubhouse Facilities, based upon an initial monthly contribution by each residential unit owner in each of the Condominium Corporations, following the occupation of each such residential unit (provided tha the Clubhouse Facilities have then been completed by the Declarant by such date, as determined by the Declarant), of One Hundred ($100.00) Dollars per month (the 'Membership Fee') during the first fiscal year of each such Corporation.

> As and from the date of the opening of the Clubhouse Facilities (as determined by the Declarant, acting reasonably), each Corporation shall pay the Allocated Cost Contribution to the Declarant in equal monthly installments on the first day of each and every month, *irrespective of* the actual amount of each owner's use of the Clubhouse Facilities or *the cost of operating and maintaining same by the Declarant*. [emphasis added]

[79] It is obvious that a membership fee based on the cost of operating the Clubhouse could not have been fixed at an initial fee of $100 per month in the EASCA, prior to knowing the operating costs and even prior to construction of the Clubhouse. Further, if the ACC was somehow to be calculated on a basis that insured that it was non-profit, the cost of construction of the clubhouse, its financing, and its annual operating costs – all of which are borne by Blue Shores – would have to be taken into account, and a mechanism for amortizing these costs and reconciling them on an annual basis would have to be built into the EASCA.

[80] No such provisions exist, beyond the $100 initial membership fee and the annual increase of up to 10%. In fact, article 6.01 specifies that the ACC is to be calculated without regard to the operating and maintenance costs of the Clubhouse. That could not possibly be the case were Blue Shores meant to ensure that the annual fees exclude of any profit.

[81] Since the phrase "non-profit" implies that the operation be run on a break-even basis, Blue Shores would of necessity have to calculate the cost of operating and maintaining the Clubhouse in coming up with annual ACC for each of the Applicants. That, however, is precisely what article 6.01 states is *not* to happen.

[82] Under article 5.00 of the EASCA, each of the Applicants is obliged to pay the ACC. Then, and under article 7.01, each Applicant's proportionate share of the cost of the shared services and facilities covered by the EASCA is based on the number of condominium units represented by it. The calculation, and division among the Applicants, is strictly formulaic.

[83] Although the Clubhouse membership fees and the common expenses tend to be paid by the condominium unit owners to the Applicants in one cheque, that is purely a matter of the mechanics of payment. The two amounts are legally, economically, and conceptually distinct. The Applicants would characterize it otherwise, but the relationship between Blue Shores each of the Applicants with respect to the ACC is not like that between the Applicants and their respective condominium unit owners with respect to common expenses.

[84] Under the *Condominium Act*, the Applicants are each responsible to account to the owners for the operating and maintenance expenses that make up the annual common expenses. That is simply not the case with respect to the ACC, as it is calculated as a formula and not as a result of actual expenses incurred. The individual unit owners' membership fees may be mechanically paid each month with their common expense fees, but there is no accounting due from Blue Shores as to how the ACC is used because it is paid as a flat fee.

[85] The Applicants seek audited statements of the Clubhouse's operations, but given the formula for calculating the ACC there is no contractual basis for this and no reasonable expectation of it. Article 5.03 of the EACSA requires Blue Shores to prepare and submit to the Applicants their respective ACC on an annual basis. In that way, the Applicants will know in advance the amount of their ACC and can accordingly engage in an accurate budgeting exercise for their condominium unit holders.

[86] That is the extent of Blue Shore's accounting obligation to the Applicants, and it has fulfilled it each year. The *Condominium Act*'s provisions for an accounting of common expenses to the unit owners is an obligation imposed on the Applicants as condominium corporations, and not on Blue Shores as owner and operator of the Clubhouse.

IV. Registration of the Clubhouse

[87] Recital C and article 5.01 of the EACSA provide that Blue Shores intends to register the Clubhouse as a condominium unit. Likewise, the Disclosure Statements for two of the Applicants provide that the Clubhouse will form a unit in one of the future condominiums. Among other things, this will facilitate the eventual conveyance of the Clubhouse to the Applicants, who at that point will be the owners of this unit. Blue Shores has not registered the Clubhouse as a unit, but rather continues to hold it in non-condominium, freehold ownership.

[88] The Applicants submit that this failure to register the Clubhouse as a condominium unit signifies that Blue Shores made material misrepresentations in its condominium documentation, contrary to the prohibition on such misrepresentations in section 133(1) of the *Condominium Act*. This default, they contend, is more than a mere legal technicality.

[89] The Applicants argue that registering the Clubhouse as a condominium unit would give the condominium corporation the right of entry into the unit, the right to effect repairs and maintenance in the unit, and the right to prohibit dangerous conditions or activities in the unit. They also argue that since a condominium corporation is required to provide an annual audit to the unit owners, it would be necessary for the condominium corporation in which the Clubhouse was a unit to have accounting information with respect to the Clubhouse's management and operation.

[90] While the Clubhouse must at some point be registered as a condominium unit, there is no specific timing for this mentioned in any of the documentation. Blue Shores states in paragraph 30 of its factum that it "is prepared to consent to the conversion of the Clubhouse from freehold tenure to a condominium unit." As I read the Disclosure Statements and EACSA, this can be done at any time prior to the conveyance of the Clubhouse to the Applicants.

[91] The Applicants have not established any prejudice to themselves or to the condominium unit owners flowing from Blue Shore's failure to register the Clubhouse to date. The Applicants' arguments that absent registration they cannot enter into the Clubhouse, or effect repairs and maintenance, or prevent dangerous activities from taking place, are all based on hypothetical

fears. There is no evidence that the Clubhouse is in a state of disrepair, or in need of maintenance, or is the sight of dangerous activities; neither is there any suggestion in the record that someone has been barred entry to the Clubhouse. This list of supposed prejudices appears entirely artificial and inflammatory.

[92] Furthermore, there is no merit to the Applicants' assertion that registration of the Clubhouse as a condominium unit would give the Applicants access to the accounting information that they have otherwise requested and been denied. A condominium corporation must, of course, provide a yearly audit to the unit owners, and if the Clubhouse were registered then Blue Shores would itself be one of those unit owners to whom the Applicants owe an audit. That obligation, however, does not give the condominium corporation the right to financial or other types of information internal to the unit owners.

[93] The Disclosure Statements and EACSA allow Blue Shores to set the membership fees and ACC as a flat fee, and the registration of the Clubhouse as one more condominium unit is not intended to, and will not, undermine that right. When the Clubhouse is registered as a unit, the condominium corporation in which it is housed will no more have access to its internal finances as it has to the household finances of its other unit owners.

[94] Just as it is no concern to the condominium corporation how much money the owners of a residential unit spend on themselves and their condominium, it will be no concern to the condominium corporations how much money the owners of the Clubhouse spend. While one of the Applicants will at some point be the corporation in which the Clubhouse is registered as a unit, that new capacity will not give that particular Applicant any extra rights over the Clubhouse beyond ensuring that the standards required of all unit owners are maintained.

V. Oppression remedy

[95] The Applicants make an additional claim that the conduct of Blue Shores in failing to convey the Clubhouse, in mortgaging the Clubhouse, in failing to account for the operational and maintenance expenses of the Clubhouse, and in failing to register the Clubhouse as a condominium unit, is unfairly prejudicial or unfairly disregards their interests. As such, the Applicants seek a remedy under section 135(2) of the *Condominium Act*.

[96] As already concluded in Parts I through IV above, none of the conduct alleged against Blue Shores violates the contractual or property rights of the Applicants. The Applicants submit, however, that the oppression remedy goes beyond strict legality, and applies to conduct that may be legal but is nevertheless unfair. Citing *McKinstry v York Condominium Corporation No. 472*, 2003 CarswellOnt 4948, at para 33 (SCJ), counsel for the Applicants argues that section 135(2) provides a means for stakeholders in a condominium project "to protect their legitimate expectation from conduct that is unlawful or without authority, and even from conduct that may be technically authorized and ostensibly legal."

[97] I agree that the oppression remedy addresses matters beyond the strict legality of a respondent's conduct. However, it is necessary to keep in mind the Supreme Court of Canada's admonishment in *Re BCE Inc.*, [2008] 3 SCR 560, at para 59, that, "[w]hat is just and equitable is judged by the reasonable expectations of the stakeholders in the context and in regard to the relationships at play."

[98] The Supreme Court elaborated on the notion of expectations that arise beyond strict legality at para 62 its *BCE* judgment:

> As denoted by 'reasonable', the concept of reasonable expectations is objective and contextual. The actual expectation of a particular stakeholder is not conclusive. In the context of whether it would be 'just and equitable' to grant a remedy, the question is whether the expectation is reasonable having regard to the facts of the specific case, the relationships at issue, and the entire context, including the fact that there may be conflicting claims and expectations.

[99] Thus, for example, it would be reasonable for the purchasers of condominium units, and by extension for the Applicants, to expect Blue Shores to sell all of the units in the development at the same pace as other comparable developments in the Collingwood area. It is not reasonable, although it may be sincere, to have been expected Blue Shores to sell all of its units within a certain time frame – 7 years, or 10 years, etc. – where the local market conditions have made it impossible for other developers of comparable projects to do the same. Despite the lack of an outside deadline for selling the units, the former scenario might give rise to an oppression remedy. The latter does not.

[100] Likewise, while there is no prohibition on Blue Shores placing a mortgage on the Clubhouse property, it would be contrary to reasonable expectations to mortgage the Clubhouse in a way that could not be discharged within 120 days after the last unit is sold. On the other hand, while it may be contrary to the subjective expectations of some unit owners, it is not unreasonable to mortgage the Clubhouse in a way that allows for the mortgage to be discharged at the time set for conveyance to the Applicants. Again, the former scenario might provide the factual basis to support an oppression remedy, while the latter does not.

[101] As a further example, while there was no date fixed for the registration of the Clubhouse as a condominium unit, it would go against reasonable expectations for Blue Shores to refrain from doing so that it could maintain the Clubhouse in a way that is contrary to the ordinary rules of the condominium corporations. By contrast, while it may be contrary to the particular expectations of the Applicants and their unit owners, it is not unreasonable to defer registration of the Clubhouse as long as the Clubhouse is maintained in a way that in any case complies with the condominium corporations' rules. The former might lead to the imposition of an oppression remedy. The latter, of course, does not.

[102] As D. Brown J. pointed out in *Western Larch Limited v Di Poce management Limited*, 2012 ONSC 7014, at para 256, "not every unmet expectation gives rise to an oppression claim."

The oppression remedy in section 135(2) of the *Condominium Act*, like the equivalent provisions in the corporate statutes, is designed to provide redress for technically legal but surprising and oppressive acts. But the element of unfairness is contained in the undermining of objectively discernable expectations, not in the undermining of one party's entirely subjective, even if sincere, expectations.

[103] A frustratingly slow real estate market, or a unilateral misapprehension of a clear contractual provision, does not suffice to invoke the "just and equitable" jurisdiction of the court under the statutory oppression remedy. None of the evidence in the record before me, and none of the allegations leveled against Blue Shores, satisfies the section 135(2) criteria. The relief proposed by the Applicants under the oppression remedy would, if granted, provide them with rights that they could not reasonably have expected.

VI. Land Titles notice

[104] On April 27, 2012, the Applicants registered in the Land Titles Office a Notice of An Unregistered Estate, Right, Interest or Equity against title to the Clubhouse, as Instrument No. SC976990. This registered instrument gives notice to the public that the Applicants claim a property right that encumbers the title. That claim, as concluded in Part I above, is without merit. The Applicants have no equitable or proprietary interest in the Clubhouse; what they have is a right to a contract to be entered into in the future for the purchase of the Clubhouse at a stipulated price.

[105] In his affidavit, Mr. Walker states that the Notice registered by the Applicants is wrongful. It also indicates that the management of the Applicants provides a Status Certificate to each potential purchaser of a condominium unit, and that the Status Certificate makes reference to the present litigation. Mr. Walker deposes that the Blue Shores sales staff has advised him that when prospective purchasers conduct their due diligence concerning a potential acquisition of one of the condominium units, the Status Certificate and its reference to litigation acts as an impediment to sale of the remaining units.

[106] It stands to reason that Blue Shores' sales staff is accurate in assessing this as an impediment to sales. One can surmise that a similar discouragement is introduced when the potential purchasers have their solicitors conduct a title search in advance of closing and encounter the registered Notice. The very reason for registering a Notice is to ensure that all who deal with Blue Shores understand that a contested claim to title is pending.

[107] It is evident to me that the registered Notice has compounded the sanctions incurred by Blue Shores by adding reputational costs to the legal deterrence that the Applicants seek. As Professor Edward Iacobucci has put it in his article "On the Interaction between Legal and Reputational Sanctions", *J. Legal Stud.* (forthcoming 2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1990552, at 20, "if the law fails to account for the informal sanctions when setting legal sanctions, the total sanction for wrongdoing will exceed the social harm from the conduct and overdeterrence will result."

[108] In effect, the Applicants have unilaterally imposed a reputational sanction in advance of their sought-for legal sanction, thereby increasing the overdeterrence described by Professor Iacobucci. As the learned author points out, there is a complex and not always predictable relationship between legal and reputational sanctions; accordingly, if the Applicants had successfully proved their case there would be a need to contemplate some adjustment to the remedy that would flow under these circumstances.

[109] As it turns out, the Applicants have not proved their case. Accordingly, the Applicants' Notice should be discharged from title to the Clubhouse. Likewise, any reference to the present litigation or to an interest in equity claimed by the Applicants must now be removed from the Status Certificate.

[110] Blue Shores seeks no monetary relief in respect of the reputational harm it has suffered. Ironically, the Notice registered by the Applicants, if it deterred any purchasers, had precisely the effect that this Application was brought to challenge. That is, it would have increased the delay in selling the remaining condominium units, which would, in turn, put the conveyance of the Clubhouse further into the future.

[111] Informal sanctions, in other words, have been visited on both sides, and there is little more the court can or should do in that regard.

VII. Disposition

[112] The Application is dismissed.

[113] Instrument No. SC976990 is to be discharged from title to the Clubhouse.

[114] The parties may make written submissions as to costs. I would ask that these be sent directly to me, within two weeks of the date of these reasons for judgment.

Morgan J.

Released: January 9, 2014

CITATION: Simcoe Vacant Land Condo. Corp. No. 272 v. Blue Shores Developments Ltd., 2014 ONSC 187
COURT FILE NO.: CV-12-462334
DATE: 20140109

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Simcoe Vacant Land Condominium No. 272, Simcoe Vacant Land Condominium No. 299, Simcoe Vacant Land Condominium No. 312, and Simcoe Vacant Land Condominium No. 321

Applicants

– and –

Blue Shores Developments Ltd. and Duca Financial Services Credit Union Ltd.

Respondents

REASONS FOR JUDGMENT

E.M. Morgan J.

Released: January 9, 2014