Court of Queen's Bench of Alberta

Citation: Condominium Corporation No. 0825873 v. 1246153 Alberta Ltd., 2010 ABQB 718

Date: 20101118
Docket: 0903 19893
Registry: Edmonton

2010 ABQB 718 (CanLII)

Between:

The Owners: Condominium Corporation No. 0825873

Plaintiff

- and -

1246153 Alberta Ltd.

Defendant

Corrected judgment: A corrigendum was issued on November 22, 2010; the corrections have been made to the text and the corrigendum is appended to this judgment.

Reasons for Decision
of
W. Breitkreuz, Master in Chambers

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[1] This is a debt action for unpaid condominium fees assessed against the defendant 1246153 Alberta Ltd. (the "Developer") by the Plaintiff The Owners: Condominium Corporation No. 0825873 ("Spruce Ridge").

[2] Spruce Ridge seeks:

(a) Summary judgment for the Developer's unpaid condominium fees, with costs and interest;

(b) Summary dismissal of the Developer's counterclaim; and,
(c) Leave to amend the statement of claim to add seven condominium units that had not been caveated at the time the original statement of claim was issued

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[3] The Developer:

(a) Contests the quantum of outstanding fee arrears, claiming that there was a special reduced fee arrangement for the Developer's units;
(b) Claims various set-offs for amounts allegedly paid by the Developer on behalf of Spruce Ridge; and
(c) Claims for damages for loss of opportunity of use of those funds.

[4] Spruce Ridge submits that:

(a) There was no such special fee arrangement, and in any event, such an agreement would not be enforceable in law;
(b) the Developer either did not make the payments claimed, or the payments were not made on behalf of Spruce Ridge; and
(c) There is no evidence supporting a loss of opportunity claim.

The Parties

[5] Spruce Ridge is a Condominium Corporation that was formed on July 8, 2008. Spruce Ridge consists of a 123 unit condominium complex located at 240 Spruce Ridge Road in Spruce Grove, Alberta.

[6] The Developer is an Alberta corporation, and the registered owner of 40 condominium units in Spruce Ridge (the "developer units").

[7] Phat Vuong ("Vuong") is a director of the Developer.

[8] From July 2008 to March 2009, Vuong was also the president and sole director of Spruce Ridge (the "developer board")

[9] In July 2008, the Developer Board established the condominium fee contributions for Spruce Ridge (the "developer rates").

The Bylaws

[10] On August 1, 2008, the default *Condominium Property Act* by-laws were repealed and replaced by new by-laws, registered as instrument no. 082 427 9097 at the Land Titles Office (the "by-laws").

[11] The bylaws set out, among other things the following:

(a) Spruce Ridge's Board of Directors (the "Board") shall apportion and assess each year's estimated common expenses to the owners in proportion to each owner's unit factor (article 35.1 and 35.2);

(b) The owners are to pay such assessment in equal monthly installments, due on the first day of each month (article 35.4);

(c) Interest on assessment arrears is to accrue at the rate of 18% per annum, calculated at a rate of 1.5% per month, on a simple basis with monthly rests, from the date the assessment was due to the date of payment (article 35.6);

(d) In any year where the Board does not set a new assessment of yearly condominium fees for common expenses, the assessment set previously continues (article 35.7)

(e) Spruce Ridge has the right to recover from any owner by action for a debt the unpaid amount of any condominium fee assessment, together with interest and the costs incurred by Spruce Ridge in recovering the unpaid assessment (article 36.1); and,

(f) Spruce Ridge may register a caveat against an owner's unit with respect to amounts that Spruce Ridge may recover from that owner under the bylaws, and is not obliged to discharge the caveat until all arrears, including interest and enforcement costs, are paid in full (article 36.2).

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Assessments and Caveats

[12] Spruce Ridge has not changed the condominium fee assessment from the developer rates. The developer rates have continued to be assessed against the developer units, with applicable interest and charges (the "assessments").

[13] The Developer had failed to pay the assessments with respect to the developer units, with certain exceptions detailed below, since September 2008.

[14] Between June 30, 2009 and March 25, 2010, Spruce Ridge filed caveats on title to the developer units as a result of the Developer's failure to pay the assessments (the "caveats"). Six of those caveats were filed on developer units after the statement of claim was filed in this action.

[15] In three instances, the Developer paid the arrears owing with respect to certain developer units, as follows:

(a) On December 18, 2009, the Developer paid the assessments owing as of that date on six developer units (the "December units"), being $25,246.33, including directly related legal costs of $1,800.00;

(b) On February 8 and 10, 2010, the Developer paid the assessments owing as of that date on another six developer units (the "February units"), being $28,572.39, including directly related legal and administrative costs in the sum of $2,272.50; and,

(c) On March 15, 2010, the Developer paid the assessments owing as of that date on another eight developer units (the "March units"), being $41,105.17, including directly related legal costs in the sum of $2,400.00 and administrative charges o f $840.00.

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Arrears

[16] As of March 31, 2010, the Developer owed a total of $98,256.30 in arrears, plus costs and interest, with respect to the developer units.

[17] After March 31, 2010, the Developer continued to not pay the assessments, and a total amount of $8,705.08 per month, plus interest and costs, has continued to accrue with respect to the developer units.

[18] Spruce Ridge acknowledges that in August 2010, it received payments of $8,705.08 and $10,614.65 with respect to assessments for the developer units (the "August payments").

[19] As a result, as of September 1, 2010 a total of $110,695.88 remains outstanding, before interest or costs. This calculation includes credit for the payments made with respect to condominium fees for the December units, February units and March units and the August payments. A further credit of $7,312.50 would be accorded for legal and administrative costs already paid.

Steps in this Action

[20] On or about December 16, 2009, Spruce Ridge issued a statement of claim against the Developer, seeking payment of the arrears with respect to the developer units.

[21] On or about January 8, 2010, the Developer filed a statement of defence and counterclaim in the within action.

[22] On or about February 1, 2010, Spruce Ridge filed a statement of defence to counterclaim in the within action.

[23] On April 7, 2010, the Developer brought an application seeking to be declared in good standing and entitled to vote at Spruce Ridge's annual general meeting. This application was adjourned to this special chambers hearing by order of Master Wacowich.

[24] On July 20, 2010, on a few hours' notice, the Developer brought a further application seeking an interim injunction prohibiting Spruce Ridge from proceeding with its annual general meeting unless the Developer was permitted to vote or until the question of whether the Developer was entitled to vote was settled. This application was heard and dismissed by Justice Browne on July 20, 2010, with costs.

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Parallel Action

[25] On June 4, 2010, Spruce Ridge filed a statement of claim in a separate action seeking damages for construction deficiencies against the Developer and VSD (the "Parallel Action").

Other Parties

[26] VIP Condominium Management ("VIP") was the property management company retained by the plaintiff. Steven Carlson ("Carlson") is the President of VIP.

[27] VSD Development Corporation Inc. ("VSD") was the company responsible for the construction of Spruce Ridge. Vuong is also a director of VSD.

ISSUES

[28] The issues in this application are as follows:

(a) Has Spruce Ridge met the evidentiary burden for summary judgment?
(b) If so, has the Developer shown that there is a genuine issue for trial with respect to its defence and counterclaim?
    (i) Specifically, is there any support in fact or law for the allegations that:
        (1) There was a special fee arrangement for the Developer?
        (2) There are set-offs that can be claimed against Spruce Ridge?
(c) There was a loss of opportunity for funds paid for Spruce Ridge?

Test for Summary Judgment

[29] Pursuant to Rule 159(1) of the Alberta Rules of Court, the Court may grant summary judgment where there is no genuine issue for trial, or when the only genuine issue is as to amount.

[30] There is a two-step process in evaluating whether it is appropriate to grant summary judgment. First, "[t]he plaintiff bears the evidentiary burden of proving its cause of action on a balance of probabilities". Once the plaintiff meets this step,"the evidentiary burden shifts to the defendant. The defendant can avoid summary judgment by proving there is a genuine issue for trial. It must be beyond doubt that no genuine issue for trial exists". ***Eng v. Eng*** ABCA 19 at paragraph 5.

Does Spruce Ridge have a valid claim for the Arrears

[31] Spruce Ridge argues that on the whole of the evidence, it is clear that the Developer has failed to pay the assessment for the developer units, and that there is a debt due and owing.

[32] The condominium fee contributions were set by Spruce Ridge during the reign of the developer board. The contributions were set for each of the units in Spruce Ridge, including the developer units, by the developer board.

[33] In accordance with article 35.7 of the bylaws, the assessments have continued at this rate to the present.

[34] The Developer has failed to pay these assessments. While the Developer paid the assessments owing for the December units, February units and March units at one time, the Developer failed to pay the assessments after that, until the recent August payments.

[35] Spruce Ridge argues that the statement of defence and counterclaim discloses no genuine issue for trial, as it does not raise any legitimate defence to the amount owing to Spruce Ridge.

The Defendant Cannot Simply Deny Debt

[36] A simple denial of debt is insufficient to satisfy the Developer's burden to raise a genuine and triable issue:

> The amount owing is a quest ion of fact so there must be evidence to show a triable issue as to amount. It is not enough for a defendant to just plead that there is no debt "as alleged or at all and put the plaintiff to the strict proof thereof" and say that that discloses a triable issue. The plaintiff's evidence must be impeached or contradicted. The first is done by a cross-examination... and the second is done by contrary evidence ... [***Montreal Trust Co. of Canada v. Sagara Investments Inc.***, 167 A.R. 290 at 29 (Q.B.)]

[37] Spruce Ridge submits that the Developer has failed to impeach the evidence of Spruce Ridge with respect to the assessments owing, and has failed to provide any credible evidence to contradict Spruce Ridge's claims.

No Evidence of Alleged Special Condominium Fee Arrangements

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[38] The Developer claims that the parties entered into a fee agreement in October 2008 under which the condominium fees for the developer units would be $100.00 per month, rather than the developer rates, until such time as the developer units were rented out or sold by the developer ("the alleged fee agreement").

[39] The Developer contests the quantum of condominium fees owing on the basis that the fees charged did not take into account the alleged fee agreement. However, there is no evidence to support this alleged fee agreement.

[40] Under cross-examination, Vuong confirmed that no written agreement, resolutions or other documentation exists to prove that the alleged fee agreement ever existed. See Vuong cross-examination at p. 49 lines 15-27, and p. 50, lines 1-21.

[41] Vuong further stated under cross-examination that he felt the Developer never had to pay condominium fees and that he was doing Spruce Ridge "a favour" by agreeing to pay $100.00 per month for the empty developer units.

[42] Even if the alleged fee agreement is assumed to exist, the Developer failed to comply with even those terms. Vuong confirmed under cross-examination that no payments were ever made under the alleged fee agreement and gave contradictory responses as to why. See Vuong cross-examination at p. 57, lines 2 - 4, and pages 128 through 134.

[43] Spruce Ridge submits that these contradictions are such that no credit should be given to Vuong's varying explanations. In any event, the Developer has failed to pay even the lesser sum of condominium fees due to Spruce Ridge.

[44] Further, even if the alleged fee agreement were concluded as described by Vuong, it would be *ultra vires* the powers of a condominium board under the *Condominium Property Act* (the "CPA") and therefore void.

[45] A condominium corporation is a creature of statute and can only undertake actions specifically authorized by its creating statute. See ***Condominium Plan No. 8222909 v. Francis,*** 330 A.R. 297 (C.A.) at para. 27.

[46] Under section 39 of the CPA, the powers of a condominium corporation include the power to raise amounts by levying contributions on the owners in proportion to the unit factors of the owners' respective units, or "if provided for in the bylaws, on a basis other than in proportion to the unit factors of the owners' respective units". *Condominium Property Act,* R.S.A. 2000 c. C-22, S. 39(1)(c).

[47] The bylaws do not provide for assessing condominium fee contributions on owners on a basis other than in proportion to the unit factors of the owners' respective units.

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[48] In ***Condominium Plan No. 822909 v. Francis ("Francis")*** the Court of Appeal determined that fee assessments based on factors other than unit factors was *ultra vires* the CPA. In that instance, a developer had amended the condominium bylaws and entered into agreements with purchasers of townhouse units to set a 65% condominium fee rebate for townhouse units.

[49] While ***Francis*** was based on the previous version of s. 39, which did not permit for disproportionate fees "if provided for in the bylaws", since the bylaws here do not permit differential fees assessments, the same analysis as in ***Francis*** would apply to this case.

[50] This is especially so where the formal requirements have not been met by a developer board, as in this case, because:

> ... there is an added importance to ensuring that formalities are met while the developer is in control. Compliance with formalities serves as an additional protection to purchasers of units in the development, as it serves to avoid secret by-laws and agreements that may only surface when the corporation is turned over to the purchaser board, or some time later when the developer turns over the corporate documents to the owner board. (See ***Francis,*** supra, at para. 40)

[51] Even if the alleged fee agreement were not *ultra vires* the CPA, an assessment other than by unit factor must be consistent with the purpose and objectives to the CPA. It is clear that an arrangement that benefits only the Developer is not consistent with the purposes and objectives of the CPA. See ***Condominium Plan No. 9822595 v. Fantasy Homes Ltd.*** 2006 ABQB 325 (Master) at para. 23.

[52] Furthermore, Vuong was also in breach of his statutory duties as a director of Spruce Ridge by agreeing to the alleged fee agreement.

[53] Vuong was both a director of Spruce Ridge and of the Developer at the time the alleged fee agreement was negotiated.

[54] Directors of condominium corporations have a duty under the CPA to exercise their powers and discharge their duties honestly and in good faith. *CPA*, s. 28(2).

[55] Vuong was acting in a conflict of interest when he created a differential fee arrangement that only benefited units owned by his company.

[56] Spruce Ridge submits that creating the alleged fee agreement was oppressive, unfairly prejudicial and unfairly disregarded the interest of Spruce Ridge. I agree.

[57] In such a circumstance, the court has the power under s. 67 of the CPA to make any order that is appropriate in the circumstance. Spruce Ridge submits that it would be appropriate for the court to declare the alleged fee agreement void *ab initio*, if indeed it were found to exist at all. I cannot find that it doesn't exist. But I can, and do find, it is void.

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<u>**Alleged Set-Offs Cannot Be Claimed by the Developer**</u>

[58] The Developer has also claimed that it had an agreement with Spruce Ridge that the Developer would pay the expenses of Spruce Ridge, and that such amounts would be offset against the condominium fees owing (the "Alleged Set-Off Agreement").

[59] Spruce Ridge submits that the Developer has not raised a valid defence of legal set-off nor equitable set-off, as all the amounts claimed as set-offs were either paid by a third party, VSD, and not the Developer; or, are amounts that were not expenses of Spruce Ridge.

[60] In order to raise a valid defence of legal set-off, both obligations in question must be liquidated debts and those debts must be mutual cross obligations between the parties. See ***Telford v. Holt***, [1987] 2 S.C.R. 193 at para. 25. Mutual cross obligations are debts which are due from either party to the other.

[61] The defence of equitable set-off is a claim that a defendant has against a plaintiff. However, as Master Funduk noted:

> "equity does not say that a defendant can set up a claim for equitable set-off that belongs to someone else". See ***Cormode & Dickson Construction (1983) Ltd. v. Harrison*** (1999), 247 330 (Master) at para. 25.

[62] Many of the amounts claimed as set-off by the Developer do not relate to debts due from Spruce Ridge to the Developer, but rather amounts paid by VSD and cannot therefore be legal or equitable set-offs.

[63] Spruce Ridge argues that due to the lack of connection between the Developer's claim for set-off and the debt owed by the Developer to Spruce Ridge, the defence of set-off is not a reasonably arguable defence and has no prospect of success. I agree.

<u>**Specific Claims for Set-Off**</u>

[64] The Developer claims the following amounts should be considered set-offs:

a. EPCOR payments - $19,520.83
b. Lion City Security - $19,500.00
c. SuperSave waste bins - $11,981.85
d. Sunlight Landscaping - $1,100.00
e. Keyfobs and Keys - $2,625.00
f. Loan - $20,000.00
g. Tornado Welding - $5,795.00
h. City of Spruce Grove Water and Utilities - $6,006.29
i. Schindler Elevator Corporation - $6,508.29

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j GE Security - $470.40
k Overpayment of condominium fees - $23,400.00
l Insurance deductible - $5,000.00

[65] I will go through each of these item individually.

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EPCOR - $19,520.83

[66] The Developer claims $19,520.83 for monies paid to EPCOR. However, the invoices produced in support of the claim show that it was not the Developer, but VSD, who paid the EPCOR bills. As a result, this is not a payment that would qualify under the Alleged Set-Off Agreement.

Lion City Security - $19,500.00

[67] The Developer claims $19,500.00 for monies paid to Lion City Security. However, there is no evidence that the Developer paid the Lion City Security bills. Further, the benefit of the security services was to VSD, not Spruce Ridge, as it was obtained to protect the construction materials in Spruce Ridge project.

[68] The invoices for Lion City's services are made out to VSD, not the Developer or even Spruce Ridge, so it appears that VSD, not the Developer, paid for these services.

[69] Further, Vuong confirmed under cross-examination that no resolution was passed by Spruce Ridge to authorize the hiring of security services, even though he was the president of Spruce Ridge at the time the services were obtained (Aug. 1, 2008 to October 15, 2008). VSD and the Developer had been using Lion City Security since the project commenced at Spruce Ridge. However, as of August 1, 2008, Spruce Ridge had retained and was paying VIP as its property manager and VIP was responsible for arranging security, if necessary. Despite admitting that VIP was responsible for day-to-day control of the corporation at this time, Vuong provided no explanation as to why he continued to deal with security from August through October.

[70] In light of the above, it is clear that the Lion City Security costs were not for the benefit of the construction project, not Spruce Ridge, and therefore would not be a debt owing to the Developer. In any event, it was VSD, not the Developer, who incurred this costs, and therefore it is not a debt that can be set off against condominium fees owed by the Developer.

SuperSave Management Services - $11,981.85

[71] The Developer claims $11,981.85 for monies paid to SuperSave Management Services ("SuperSave"). However, this is not an expense of Spruce Ridge, as the waste management services were obtained to deal with the construction waste from building Spruce Ridge.

[72] Vuong confirmed under cross-examination that SuperSave was retained by the Developer and VSD during the time of developing Spruce Ridge. The bins provided by SuperSave were for the benefit of the construction project, because VSD was still putting all its waste from the project construction into the bins.

[73] The SuperSave invoices produced by the Developer in support of this claim shows that the disposal was of "mixed construction" waste type, confirming that the Super Save bins were used solely for the construction of Spruce Ridge , not for the residents of Spruce Ridge. Vuong also confirmed that no resolution was passed by Spruce Ridge that authorized this service, even though he was president of the Corporation at the time the service was obtained. (Vuong cross-examination at page 104, lines 6 to 26)

[74] When pressed to explain why the SuperSave services were necessary when Spruce Ridge had arranged for its own waste management services in October 2008, Vuong claimed that it was because SuperSave was unable to keep up with the waste produced at the location, but provided no other evidence other than this bald assertion. (Vuong cross-examination at p. 109, lines 4 to 111)

[75] In light of the above, it is clear that the SuperSave bins were not an expense properly attributable to Spruce Ridge, and no set-off can be claimed for it.

Sunlight Landscaping - $1,100.00

[76] The Developer Claims $1,100.00 for monies paid to Sunlight Landscaping ("Sunlight"). However, the amount was never an expense of Spruce Ridge, as it was the responsibility of the builder of the project, VSD, to do landscaping. Further, there is no evidence that this invoice was paid by the Developer, as opposed to VSD, to whom the invoice is addressed.

[77] Vuong confirmed under cross-examination that no resolution was passed by the Condominium Corporation that authorized this service, even though he was president of the Corporation at the time the service was obtained. The invoice provided by the Developer in support of this claim is dated August 17, 2008 and is addressed to VSD, not the Developer. The invoice is for garbage removal in the amount of $400, Bobcat work in the amount of $1,200.00 and lawn service in the amount of $1,100.00.

[78] Further, under cross-examination, Vuong further admitted that VSD was responsible for completing landscaping, and that the $1,100.00 claimed was for the lawn services provided prior to August 8, 2008. These lawn services were provided prior to the completion of the first phase of the Spruce Ridge project on August 15, 2008. As a result, it is not an expense properly attributable to Spruce Ridge and cannot be claimed as a set-off.

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Keyfobs and Keys - $2,625.00

[79] The Developer claims $2,625.00 for monies paid for keyfobs and keys. The only invoice produced in support of this claim is from VSD to Spruce Ridge, and as a result, cannot be said to be a debt owing from Spruce Ridge to the Developer to which set-off might apply.

$20,000.00 Loan

[80] The Developer claims that it advanced a loan of $20,000.00 to Spruce Ridge. (Statement of defence and counterclaim at para.6(d).) However, the cancelled cheque provided by Vuong in support of the claim evidences that $20,000.00 was paid by VSD to Spruce Ridge on February 2, 2009, not the Developer. (Vuong's answer at answer to undertakings No. 17.) Further, Vuong's own evidence regarding this loan was contradictory, as he also claimed the sum of $20,000.00 was payment for condominium fees. As a result, this is not a claim to which set-off would apply.

Tornado Welding and Installing - $5,795.00

[81] The Developer claims $5,795.00 for a payment to Tornado Welding and Installing ("Tornado"). However, the only documentation provided in support of this claim is an invoice addressed to VSD. There is no evidence that the Developer, as opposed to VSD, ever paid this invoice. Further, Vuong confirmed that no resolution was passed by the Condominium Corporation that authorized this work. As a result, this is not a claim to which set-off would apply.

City of Spruce Grove Water and Utilities - $6,006.29

[82] The Developer claims $6,006.29 for monies paid to the City of Spruce Grove Water and Utilities. However, the only documentation provided in support of this claim is an invoice addressed to VSD. There is no evidence that the Developer, as opposed to VSD, ever paid this invoice. As a result, this is not a claim to which set-off would apply.

Schindler Elevator Corporation - $6,508.29

[83] The Developer claims $6,508.29 for monies paid to Schindler Elevator Corporation. However, the only documentation provided in support of this claim is an invoice addressed to VSD. There is no evidence that the Developer, as opposed to VSD, ever paid this invoice. As a result, this is not a claim to which set-off would apply.

GE Security - $470.40

[84] The Developer claims $470.40 for monies paid to GE Security. However, the only documentation provided in support of this claim is an invoice addressed to VSD. There is no evidence that the Developer, as opposed to VSD, ever paid this invoice. As a result, this is not a claim to which set-off would apply.

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Overpayment of condominium fees -$23,400.00

[85] The Developer claims that $23,400.00 in condominium fees have been overpaid. (See statement of defence and counterclaim at para. 16(k)). However, the answer to the undertaking to advise of the particulars of this overpayment provided no indication of how that sum was calculated. (Vuong's answer at answer to undertaking No. 13)

[86] Failure to provide proof of these allegations does not yield a genuine triable issue.

Additional Amounts - $5,500.00

[87] The Developer claims $5,500.00 for other amounts, namely an elevator repair invoice in the amount of $489.93 from Double G and an insurance deductible of $5,000.00 in December of 2008 relating to a flood at Spruce Ridge. (See statement of defence and counterclaim at para. 16(1)).

[88] None of the documentation provided in support of this claim indicates that the Developer, paid the invoices. The evidence shows that the invoices were issued to VSD, not the Developer.

[89] On the whole, given the lack of any positive affidavit evidence on the part of the Developer to support any of its claims for the defence of set-off, and nothing in the answers to undertakings to support the claims, the Developer has failed to meet the evidentiary burden to show that there is a genuine triable issue.

No Evidence of Loss of Opportunity to Utilize Funds - $250,000.00

[90] The Developer has counterclaimed that it suffered a loss of opportunity to utilize funds contributed to Spruce Ridge in the amount of $250,000.00. (See statement of defence and counterclaim at para. 17(a)).

[91] An undertaking was given under advisement to provide a detailed list and underlying documents that give evidence to the loss of opportunity suffered by the Developer. The Developer's answer was that:

> "Mr. Vuong has been unable to locate any documents evidencing this loss of opportunity suffered by 124. Mr. Vuong will provide such documents as and when they become available to him."

As a result, there is no evidence in support of the Developer's claim. (Vuong cross-examination at p. 125, line 21 to p. 126, line 7.

[92] The defendant also claims that the plaintiff has failed to credit interest on amounts paid on behalf of the plaintiff by the defendant, but there is no evidence to support that claim.

[93] The defendant claims that it has sought an account and that there has been a failure to account for amounts claim by the defendant, but again there is no evidence to support that claim.

Amendment of Statement of Claim

[94] The plaintiff requires an amendment to correct a misnomer of the plaintiff's name to Condominium Corporation No 0825873 which is allowed.

[95] The amendment to add a claim for the arrears owing on what has been referred to as developer units is also permitted.

Application by Developer to Permit Voting

[96] In its notice of motion the Developer seeks a declaration that the Developer be permitted to vote at Spruce Ridge's annual general meeting as long as the Developer begins paying the monthly condominium fees, or alternatively, that the Court permits the Developer to pay an amount into court with respect to condominium fees to permit the Developer to vote.

[97] The CPA and the bylaws are clear; if an owner is in arrears, they do not have the right to vote at meetings. In view of my findings in relation to the violation by the defendant of the provisions of the bylaws, it is impossible for me to authorize it to vote at the plaintiff's annual general meeting. Section 39 of the CPA does not permit payment into Court of condominium fees in lieu of payment to the condominium corporation.

[98] Accordingly the plaintiff will have judgment in the amount claimed in respect of unpaid condominium fees, together with all solicitor-client costs incurred by the Condominium Corporation in respect of the collection of the condominium fees, including filing of caveats, together with interest as claimed.

Heard on the 16th day of September, 2010.

Dated at the City of Edmonton, Alberta this 18th day of November, 2010.

W. Breitkreuz
M.C.C.Q.B.A.

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Appearances:

Sandeep Dhir and Lindsey Miller
Field LLP
for the Plaintiff

Richard Cotter, Q.C.
Fraser Milner Casgrain LLP
for the Defendant

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Corrigendum of the Reasons for Decision
of
W. Breitkreuz, Master in Chambers

The Appearances section of these Reasons for Decision are hereby amended to read that:

Sandeep Dhir and Lindsey Miller
Field LLP
Counsel for the Plaintiff

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