

Court of Queen's Bench of Alberta

Citation: Condominium Plan No. 8722887 v. Callaghan, 2011 ABQB 638

Date: 20111019
Docket: 0903 12390
Registry: Edmonton

2011 ABQB 638 (CanLII)

Between:

The Owners: Condominium Plan No. 872287

Plaintiff

- and -

Patrick Shawn Munroe Callaghan

Defendant

**Memorandum of Decision
of
W. S. Schlosser, Master in Chambers**

[1] This case raises the question of how bedbugs fit into condominium law. The answer depends on whether the problem is individual or collective; whether one person has them, or whether everyone does.

[2] The Plaintiff dealt with a bedbug infestation which it said originated in the Defendant's unit and spread to an adjacent unit. The Condominium Corporation charged him with clean-up and extermination costs of \$8,420.64, plus legal fees and interest of \$27,091.10. The Defendant denied that he caused the problem.

[3] The Condominium Corporation applied for Summary Judgment and an Order Nisi. Summary Judgment could not be given as there was no real evidence that the Defendant was the source of the infestation; at least no evidence that would permit summary disposition of this case.

[4] The Condominium Corporation filed a Caveat. The owner wants it off.

[5] The *Condominium Property Act*, RSA 2000 c. C-22 supports a distinction between obligations that are fundamentally common, or 'collective', and those that are individual. The collective obligations achieve an *in rem* quality and are sometimes thought to have a 'super-priority': *Condominium Plan 882 0814 v. Birchwood Village Green Ltd.*, 1998 ABQB 458, per Nation J., *Alder Fulman & Assoc. Ltd. v. Condominium Plan CDE 13442* (1985) ABCA 1. *Central & Eastern Trust Co. v. Borland*, (1981) 14 Alta L.R. (2d) 376, 36 AR 260 per Funduk, M. Individual duties remain *in personam* and are enforced with the usual range of personal remedies.

[6] Obligations of the first type are called contributions in the Act. They are described in sections 39(1)(a) - (c) and 39(2). Interest may be included in this category (s. 40)(1)). The Bylaws in this case use the term "common expense".

[7] In recognition of the super priority, a practice has developed whereby foreclosing mortgagees pay the outstanding contributions together with legal expenses. Section 42(a) permits the recovery of costs and expenses incurred by the corporation but it does not give legal expenses any special status, or priority. Payment of outstanding condominium fees is referred to in paragraph 4(b) of the template Order Confirming Sale and Vesting Title. It is silent about legal expenses.

[8] Unpaid *contributions* will support a Caveat (s. 39(7), (8)). Section 42(b) permits the recovery of reasonable expenses arising from the preparation, registration, enforcement and discharge of the Caveat but the subsection does not otherwise include legal fees.

[9] In this case, the costs and related legal expenses are said to arise from the breach of a bylaw by an individual owner. They have been treated by the Plaintiff as an individual obligation rather than a common, or collective obligation. As such, this is a section 39(1)(d) scenario and falls within Bylaws 12.01 and 12.03. Section 39(1)(d) applies 'in respect of the unit or common property that is leased to that owner'. The obligation is individual. The Defendant was the only one assessed. The duties are personal and the Act allows recovery of the claim as a debt. Accordingly, this claim will not sustain a Caveat.

[10] The Condominium Corporation is directed to remove its Caveat with respect to the clean-up and extermination costs, and related legal costs.

Heard on the 13th day of September, 2011.

Dated at the City of Edmonton, Alberta this 19th day of October, 2011.

W. S. Schlosser
M.C.C.Q.B.A.

Appearances:

Dusten Stewart
Mingos Stewart Masson
for Servis

Stewart Brownlee
Hansma Bristow Finlay LLP
for the Plaintiff

Harvey Hait
Cleall LLP
for the Defendant