

# In the Court of Appeal of Alberta

**Citation:** Magnus v Mason, 2020 ABCA 237

**Date:** 20200615  
**Docket:** 1901-0196-AC  
**Registry:** Calgary

**Between:**

**Timothy Magnus and Magnus Diversified Inc.**

Respondents  
(Plaintiffs)

- and -

**Frank A. Mason, Frank A. Mason Professional Corporation, Mason Silver and Mason  
Silver Groves**

Appellants  
(Defendants)

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**The Court:**

**The Honourable Madam Justice Michelle Crighton  
The Honourable Madam Justice Jolaine Antonio  
The Honourable Mr. Justice Kevin Feehan**

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## **Memorandum of Judgment Delivered from the Bench**

Appeal from the Decision by  
The Honourable Mr. Justice D. B. Nixon  
Dated the 24th day of May, 2019  
Filed on the 24th day of May, 2019  
(2019 ABQB 341, Docket: 0901 11714)

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**Memorandum of Judgment  
Delivered from the Bench**

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**Antonio J.A. (for the Court):**

[1] This is an appeal from a summary trial decision on a single issue: whether the respondents, as an individual condo unit-owner, had a right to commence an action for deficiencies in the common property of the condominium complex, or whether that right of action lies exclusively with the condominium corporation.

[2] The background facts are set out in detail in the written reasons of the trial judge found at *Magnus v Mason*, 2019 ABQB 341.

[3] The trial judge concluded that Timothy Magnus and his company, Magnus Diversified Inc., had a right to pursue claims against third parties for damage to the common property of the condominium complex in which they owned units. His detailed analysis rejected the appellants' arguments that The Owners: Condominium Plan 9511228, the corporation holding title to the condo complex, had the exclusive right to sue for common property deficiencies.

[4] On appeal, the appellants argue that the trial judge reached the wrong conclusion because he misapplied the case *Terrace Corporation (Construction) Ltd v Condominium Plan 752-1207*, 1983 ABCA 126, 43 AR 386, and the Ontario case *1420041 Ontario Inc v 1 King West Inc*, 2012 ONCA 249. They submit that *Terrace* created a trust analogy such that the condo corporation is effectively a trustee and the unit owners are the beneficiaries, but the trial judge erred in rejecting this analogy. They further submit that *King West* admitted only a narrow exception to the condo corporation's exclusive right to sue, but the difference in the wording of the Alberta legislation gives the condo corporation the exclusive right to sue for damage to the common property.

[5] Both of these cases were argued before the trial judge, who held the trust analogy in *Terrace* was taken out of context and distinguished *King West* to the extent it suggested in *obiter* that a unit owner's action may be precluded in some circumstances by the Ontario legislation. We find no error in the trial judge's analysis and endorse his reasons.

[6] The appeal is dismissed.

Appeal heard on June 11, 2020

Memorandum filed at Calgary, Alberta  
this 15<sup>th</sup> day of June, 2020

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Antonio J.A.

**Appearances:**

P.W.K. Ridout, via video-conference  
for the Respondents

J P. Peacock, Q.C., via video-conference  
E. Semenova, via video-conference  
for the Appellants