

Court of Queen's Bench of Alberta

Citation: 1212443 Alberta Ltd v Condominium Corporation No 0721898, 2021 ABQB 329

Date: 20210426
Docket: 1503 09626
Registry: Edmonton

Between:

1212443 Alberta Ltd

Plaintiff

- and -

Condominium Corporation No. 0721898, Rajiv Aggarwal, Makhan Brar,
Bala Rao and Avinder Pal Gill

Defendants

Endorsement of

W.S. Schlosser, Master of the Court of Queen's Bench of Alberta

[1] This is an Application for indemnity costs by the owner of two of nine commercial condominium units arising from the failed governance of a condominium corporation. A Consent Order to replace the Board and to appoint an Administrator resulted after an almost complete failure of the Board to perform its duties. The Consent Order itself did not end the matter. The investigation conducted by the Administrator revealed a lengthy list of outstanding issues. The costs claimed are for the steps leading up to the Consent Order, communication with the Administrator once it was in place and for the Applicant's attempts to collect its costs and expenses after these were refused by the Board.

[2] The law is thoughtfully reviewed in *Stagg v Condominium Plan No. 882-2999, 2013 ABQB 684* per Tilleman J and finds support in *Condominium Corporation No. 0111505 v Anders, 2005 ABQB 401* per Clark J. We are also fortunate to have the costs provisions in the by-laws (note: *Condo Plan No. 772 0093 v Rathbone, 2010 ABQB 69* per Smart, M).

[3] I note that among the penalties specified by the by-laws is a provision for ‘all costs’ arising from a breach (18.2) The default provision of the by-laws includes ‘legal fees on a solicitor and client basis’ (42.2); which appears to modify the phrase ‘the actual costs incurred by the corporation’ in 42.1.

[4] Although this is an application by an owner and not by the corporation itself, this presents a reasonable expectation about the scale of costs if the tables were turned and proceedings are taken under s 67 of the *Condominium Property Act*.

[5] The Respondent objects, saying that the costs were waived by the failure to seek costs in the Consent Order. As a fall-back position, the Respondent argues that neither the costs claimed for corresponding with the Administrator (\$2,811.57), nor the costs of attempting to collect the costs (\$5,325.84) should be available as the remedy was essentially provided by the Consent Order. I reject this argument. The Consent Order is silent about costs but does provide for further direction (para 6).

[6] The failure of the Board to perform almost all of their duties in this case was egregious, as was their subsequent recalcitrance to address, or pay the costs of this concerned unit holder.

[7] I appreciate that a provision setting the scale of costs in the by-laws is not determinative but it is a relevant factor. In my view, solicitor and client costs, as described in the by-laws, is the only appropriate remedy here under s 67. I note that the Applicant will be bound to pay its proportionate share of these costs.

[8] Condominium Boards must not be encouraged to ignore their duties. In the circumstances of this case, fair dealing requires that an aggrieved condominium owner, forced to take this kind of action, should not receive anything less than might be permitted for the Condominium Corporation if the situation were reversed. A courageous owner, forced to challenge the missteps of the Board in Court and ultimately to protect the interests of the corporation, should not be condemned to mount their campaign at a loss.

[9] The Application is allowed, costs are to be assessed if they are not agreed.

Written Special: briefs filed October 26, 2020 and November 9, 2020
Dated at the City of Edmonton, Alberta this 26th day of April, 2021.

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

Appearances:

Todd Shipley
Reynolds Mirth, Richards & Farmer LLP
for the Plaintiff/Applicant

Murray Engelking
Engelking Law
for the Defendants/Respondents