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COURT OF APPEAL FOR ONTARIO

RE:	METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 678 (Plaintiff/Appellant) –and- FIRST ROYAL MANAGEMENT INC. (Defendant/Respondent)
BEFORE:	LABROSSE, SHARPE and CRONK JJ.A.
COUNSEL:	Mark H. Arnold for the appellant/ respondent by cross-appeal H. Keith Juriansz and R. Lachmansingh and Benjamin S. Lee for the respondent/ appellant by cross-appeal
HEARD & RELEASED ORALLY:	March 16, 2006

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On appeal from the judgment of Justice Paul U. Rivard of the Superior Court of Justice, dated September 2, 2004 made at Toronto, Ontario.

ENDORSEMENT

[1] This is an appeal from the trial judge's determination of the respective rights of the parties under a written "Parking Garage Agreement". The appellant/plaintiff brought the action to recover expenses it alleged were owing by the respondent/defendant. The respondent owns and operates a commercial underground parking garage below the appellant's residential condominium building.

[2] The trial judge had to determine whether the Agreement imposed on the respondent an obligation to pay for nineteen different expenses, including security, various garage repairs, light bulbs, plumbing, hydro and realty taxes. During the trial, the parties agreed that a detailed review of the invoices relied upon by the appellant should be carried out on a reference, and an order was made to that effect.

[3] The appellant appeals the disallowances by the trial judge of two of its claims, namely expenses for security services and real property taxes for 1995 to 1997. It submits

that the trial judge failed to consider and apply equitable principles to the issue of security services and was in error when he found that there was a subsequent agreement between the parties in relation to realty taxes.

[4] The respondent cross-appeals with respect to provisions that are in or missing from the formal judgment, and also claims that certain items recovered by the appellant were barred by the *Limitations Act*.

[5] With respect to the issues raised by the appellant, the trial judge first found that there was no ambiguity in the Agreement and that the respondent was not liable for the security services, and second, that there was an agreement between the parties to resolve the annual amount owing for realty taxes. In our view, the trial judge properly interpreted the Agreement and his finding of an agreement in relation to the realty taxes is a finding of fact which is supported by the evidence.

[6] The appellant submits that the trial judge was in error in failing to deal with its security services claim based on equity. Clearly the trial judge found no merit in this argument. In our view, it would have been open to the trial judge to conclude that the respondent derived no economic benefit from the security services. In any event, there was no deprivation to the appellant who undertook, on its own, the security measures for its own benefit. Finally, the comprehensive written Agreement did not include security. This is a juristic reason to deny recovery for this item.

[7] We see no basis to interfere and would dismiss the appeal.

[8] With respect to the cross-appeal, except for the matters described below, the formal judgment does not conform with the reasons of the trial judge. These are matters to be dealt with by the trial judge. Accordingly, we direct the trial judge to hear the submissions of the parties and settle the judgment accordingly.

[9] As to the respondent's argument dealing with repairs as opposed to maintenance and the issue of insurance, we see no error in the trial judge's treatment of these issues.

[10] Finally, the trial judge did not address the limitation period argument raised by the respondent. We agree that the appellant's claims with respect to amounts owing before July 4, 1995 are statute-barred by the provisions of the statute of limitations.

[11] Accordingly, the appeal is dismissed. The cross-appeal is allowed in the terms of these reasons. Costs to the respondent fixed in the total amount of $12,500.00.

"J.M. Labrosse J.A."
"R.J. Sharpe J.A."
"E.A. Cronk J.A".