COURT FILE NO.: 04-CV-269334
DATE: 20060209

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

PEEL STANDARD CONDOMINIUM CORPORATION NO. 668

Plaintiff

- and -

DAYSPRING PHASE I LIMITED, BRAMPTON PENTECOSTAL CHURCH INCORPORATED, CORPFINANCE INTERNATIONAL LIMITED, MERVYN OWEN THOMAS, LLOYD WISEMAN, ARNOLD NYHOLT, RICHARD MacKENZIE, LYNN YOUNGBLUT and 695598 ONTARIO LIMITED operating as MAPLE RIDGE PROPERTY MANAGEMENT

Defendants

- and -

MILLER THOMSON LLP

Third Party

COUNSEL:
Carol A. Dirks for the plaintiff
Geoff R. Hall and Helen Gray for the defendant Corpfinance International Limited

HEARING DATE: January 31, 2006

REASONS FOR DECISION

PERELL, J.

Introduction and Overview

[1] The plaintiff Peel Standard Condominium Corporation No. 668 ("Peel 668") is part of a "Christian Lifestyle" condominium project in Brampton, Ontario. Peel 668 sues: (a) Dayspring Phase I Limited ("Dayspring"), which was the declarant of the condominium project that established Peel 668; (b) Brampton Pentecostal Church Incorporated ("BP Church"), which had been the owner of the lands upon which the condominium project was constructed; (c) six individuals who had been appointed by

Dayspring to be the original members of the Board of Directors of Peel 668 ("Declarant Board Members"); (d) 695598 Ontario Limited, operating as Maple Ridge Property Management ("Maple Ridge"), which provided property management services for the project; (e) and Corpfinance International Limited ("Corpfinance"), which entered into a $1.7 million loan agreement with Dayspring, which loan agreement was assumed by Peel 668.

[2] The defendants Dayspring, BP Church, and the Declarant Board Members, bring third party proceedings against Miller Thomson LLP, which had been the solicitors for Dayspring for, amongst other things, the $1.7 million loan agreement.

[3] Pursuant to Rule 20, the defendant Corpfinance moves for a summary judgment dismissing Peel 668's action as against it. Corpfinance argues that there is no genuine issue to be tried that Peel 668 has no claim against it. Corpfinance relies on the principle that on a motion for summary judgment, the motions judge is entitled to assume that the record contains all the evidence that the party will present at trial: *Dawson v. Rexcraft Storage & Warehouse Inc.* (1998), 164 D.L.R. (4th) 257 (Ont. C.A.); *Bluestone v. Enroute Restaurants Inc.* (1994), 18 O.R (3d) 481 (C.A.). Corpfinance argues that Peel 668 has not been shown Corpfinance to have done anything wrong.

[4] Having reviewed the material filed on this motion, I agree with the argument of Corpfinance. It has satisfied the onus on it of establishing that there is no genuine issue for trial, and, therefore, I grant its motion for summary judgment.

[5] I will explain this conclusion below, but at the outset it is helpful to summarize the analysis that leads me to the conclusion that Peel 668 cannot succeed in its action against Corpfinance. The analysis proceeds along the following line of argument. Peel 668 alleges that the $1.7 million loan should not be enforced for five reasons: (1) the loan is *ultra vires*; (2) there was a breach of the disclosure requirements of the *Condominium Act, 1998*, S.O. 1998, c. 19 with respect to the loan; (3) there was oppression of Peel 668 as defined by the *Condominium Act, 1998* with respect to the loan; (4) equitable relief is available with respect to the loan; and (5) Corpfinance knew or ought to have known that full and proper disclosure had not been made with respect to the loan.

[6] The first reason, however, is unsound because the loan is not *ultra vires*. The remaining reasons are unsound because Corpfinance did nothing that would bring it within the remedial jurisdiction of the *Condominium Act, 1998* or of equity. Put shortly, whatever other defendants may have done to Peel 668, it has not been shown that Corpfinance did anything wrong nor has it been shown that it should be held responsible for the wrongdoing of others.

[7] In arriving at the conclusion that the $1.7 million was not *ultra vires*, that is, it was *infra vires*, I accept that condominium corporations are creatures of statute, and they have not been given the capacity to contract of a natural person. Condominium corporations are subject to the doctrine of *ultra vires*, and they cannot enter into a contract that is beyond the authority conferred by their enabling statute. Further, condominium corporations must comply with the formalities of contract formation

stipulated by the enabling legislation. If a condominium corporation enters into a contract that does not comply in form and substance with the requirements of the enabling legislation, then the contract is void. See: *Noldon Investments Ltd.* (1977), 1 R.P.R. 236 (Ont. H.C.J.); *Condominium Plan No. 8222909 v. Francis*, [2003] A.J. No. 976 (C.A.); *Strata Plan 1261 v. 360204 B.C. Ltd.*, [1995] B.C.J. No. 2761 (B.C.S.C.).

[8] I rely, however, on the principle that there is a distinction between agreements that are intrinsically illegal and agreements that are tainted by illegality, if at all, in how they are performed. This principle was recognized by the Court of Appeal in *Beer v. Townsgate I Limited* (1997), 36 O.R. (3d) 137 (C.A.).

[9] In *Beer v. Townsgate I Limited*, the trial judge ruled that agreements for the purchase of condominium units were illegal and unenforceable because at the time of their signing, the vendor was not registered and therefore the vendor had contravened the *Ontario New Home Warranties Plan Act* "(ONHWPA"). However, at the time the vendor entered into the agreements, the vendor had complied with all of the requirements for registration, and the agreements contained reference to the ONHWPA and made clear that the vendor intended to comply with the legislation. The Court noted that the agreements were not "inherently illegal" and that it was the intention of the parties to make a legal contract.

[10] In *Beer v. Townsgate I Limited*, the Court of Appeal held that the trial judge failed to appreciate that illegality as to contractual formation must be distinguished from illegality as to the performance of the contract. The Court of Appeal referred to *Maschinenfabrik Seydelmann K.-G. v. Presswood Brothers Ltd.*, [1966] 1 O.R. 316, where Schroeder J.A. said at pp. 321-22:

> What is forbidden by the statute and the Regulations under review is not *malum per se* but *malum prohibitum*, and in every case it becomes a crucial question whether the contract is capable or incapable of lawful performance. In the latter case, e.g., if the parties should agree to commit a crime, or if they should clearly agree to commit an act prohibited by statute, such a contract is intrinsically illegal since it necessarily involves an offence or a violation of the law. With much deference to the opinion of the learned trial Judge who decided against the plaintiff with some reluctance, he has failed to take into account the well-settled presumption of law in favour of the legality of a contract; that if a contract can be reasonably susceptible of two meanings or modes of performance, one legal and the other not, that interpretation is to be put upon it which will support it and give it operation.

[11] In the immediate case, the proper formalities were followed, and the $1.7 million loan was not intrinsically *ultra vires*, and it cannot become *ultra vires* after the fact because of the alleged misconduct, if any, of Dayspring, BP Church, the Declarant Board Members, Maple Ridge, or Miller Thomson, LLP.

[12] In arriving at my conclusion that Corpfinance did not do anything wrong, I have also rejected what I view as a logical fallacy in Peel 668's argument to resist the motion for summary judgment. As will be seen from the review of the facts below, in several instances, in negotiating and in implementing the $1.7 million loan, Corpfinance required compliance with provisions of the *Condominium Act, 1998* (and for that matter it required compliance with other laws and regulations). For example, Corpfinance required that there be proper disclosure under the Act, and from this fact, Peel 668 then argues that there is a genuine issue for trial about whether there was proper disclosure, and accordingly, Corpfinance's motion for summary judgment should be dismissed.

[13] The logical fallacy in this argument, is that assuming the $1.7 million loan was *infra vires,* and assuming that there is a genuine issue for trial about the failure of some defendants to comply with the Act, their misconduct, if found to exist, would not nullify the legality of the loan. Corpfinance is not privy or responsible for the misconduct of other defendants and indeed sought compliance with the Act. Put simply, Corpfinance certainly did not do anything wrong in requiring compliance with the *Condominum Act, 1998* (or other legislation), and Corpfinance cannot itself be faulted if others breached their obligations or acted wrongfully.

[14] Before concluding this introduction and overview, I note that in support of its motion for a summary judgment, Corpfinance made the additional argument that even if the $1.7 million loan was *ultra vires,* then, nevertheless, the loan would still be repayable in whole or in part, by Peel 668, as a matter of the law of restitution. Because of the conclusion I have reached that the loan was *infra vires,* I make no ruling on the merits of this alternative argument.

[15] My Reasons for Decision will now proceed by setting out the facts together with my analysis of the claim against Corpfinance.

The Factual Background and the Analysis of the Case against Corpfinance

[16] For the purposes of this motion for summary judgment, it is not necessary to detail much of the history of the condominium project that led to Peel 668, which history begins in 1991 with plans for the Christian Lifestyle community in the City of Brampton.

[17] A description of the factual background may begin in May 2001, when Dayspring began negotiations with Corpfinance to obtain a loan. At that time, Dayspring was the developer of the condominium project for a Christian Lifestyle community in Brampton, Ontario that was to have several phases, including a phase of 24 bungalows, which phase constituted Peel Condominium Corporation No. 650 ("Peel 650") and a phase of mid-rise condominium apartment buildings, which was to become the plaintiff, Peel 668.

[18] On September 4, 2001, Peel 650 and Dayspring on its own behalf and on behalf of the as yet uncreated Peel 668 signed a commitment letter for the $1.7 million loan that is the subject of this action. This was followed on December 10, 2001 by the signing of a formal loan agreement by Corpfinance, Peel 650, and Dayspring on its own behalf and on behalf of the as yet uncreated Peel 668.

[19] Corpfinance's role was only as a lender. It is convenient to note here that it was conceded during argument that Corpfinance was not a declarant under the *Condominium Act, 1998*.

[20] On July 19, 2002, Peel 668 was officially created, and Dayspring appointed the Declarant Board Members on July 25, 2002. The previous day, the solicitors for Corpfinance requested confirmation that each purchaser had been advised of the financing in the disclosure required by the *Condominium Act, 1998*.

[21] On August 9, 2002, the Declarant Board Members approved By-law No. 4, which authorized Peel 668 to enter into the loan agreement, and By-law No. 4 was registered. On September 5, 2002, the loan was assumed by Peel 668 pursuant to an assignment agreement. On or about September 30, 2002, the Declarant Board Members directed Corpfinance to disburse the proceeds of the loan.

[22] On October 9, 2002, there was a "turnover meeting" and the Declarant Board Members were replaced by a new Board of Directors. Peel 668 pleads that Dayspring, BP Church, and the Declarant Board Members intentionally delayed the holding of the turnover meeting until the loan monies could be advanced.

[23] The new Board of Directors reviewed the disbursement of the monies, and in this action Peel 668 takes the position that there were a number of items that had never been disclosed as part of the common elements or there were items that unit owners already paid for as part of the purchase price for their unit.

[24] Peel 668 pleads in paragraphs 44 and 49 of its statement of claim that not all of the items were previously or properly disclosed to the purchasers of the units in the condominium development. In paragraphs 69 to 71, it pleads that loan monies in the amount of $974,627.28 were for items that were improperly or never disclosed to the purchasers as being a cost in addition to the purchase price in accordance with the original disclosure statement for the condominium project. (It may be noted that as an alternative to the plea that the $1.7 million loan is not binding, Peel 668 pleads that it is only liable to repay $680,000.)

[25] Mr. Richard Francis, who is a current director of Peel 668, in paragraph 69 of his affidavit provides a somewhat smaller list of disputed items. The following chart sets out these items and their value, which in the aggregate totals $450,362.95:

46 fan coil units	$ 67,312.22
3 rooftop HVAC units	$ 6,652.00
3 make up air units for circulation to the building corridors	$121,857.00
137 apartment "B" vents and gas lines	$ 60,195.24
Bell phone wiring	$113,600.49
24 draft inducers for apartment "B" vents	$ 65,595.00

Main lobby furnishings	$ 15,151.00

[26] Mr. Francis also deposes that furnishings with a value of $70,000 were purchased but not paid for and that several items of Equipment that were described in the disclosure documents were never purchased.

[27] In paragraph 94 of its statement of claim, Peel 668 states that the loan is *ultra vires* as it is contrary to s. 56 (1)(e) of the *Condominium Act, 1998* as the monies advanced were not for the purpose of carrying out the objects and duties of Peel 668. In particular, it was not proper to borrow money to pay construction costs to be borne by the developers of the project. Relying on s. 135 of the Act (the oppression remedy), in paragraph 95, Peel 668 alleges that this conduct is oppressive and unfairly prejudicial to Peel 668 and to the unit owners.

[28] It is, in effect, because a portion of the $1.7 million of loan monies were used to purchase certain items and not other items and because there was not proper disclosure of the items that were to be purchased from the loan proceeds that Peel 668 argues that loan from Corpfinance is *ultra vires*. As I have already noted above, I disagree with this argument, and I prefer the argument made by Corpfinance.

[29] Section 17 (2) of the *Condominium Act, 1998* provides that the condominium corporation has the duty to control and administer the common elements and the assets of the corporation. Subsection 56 (1) of the Act requires that a by-law enacted by the board of directors of a condominium corporation must not be contrary to the Act or the declaration. Subsection 56 (6) provides that the by-laws shall be reasonable and consistent with the Act and the declaration. In the case at bar, the purpose of the loan was to cover the financing of common elements of Peel 650 and Peel 668.

[30] Under s. 1 (1) of the *Condominium Act, 1998*, "common elements" are defined to mean "all the property except the units" and "units" is defined to mean "a part of the property designated as a unit by the description and includes the space enclosed by its boundaries and all of the land, structures and fixtures within this space in accordance with the declaration and description." Thus, what items of property constitute the common elements of a particular condominium is a matter to be determined by the declaration and description of the particular condominium. In response to a question that I asked during argument, it was conceded that, generally speaking, the items that constitute the common elements are a variable for each condominium project.

[31] In the immediate case, the commitment letter and the loan agreement that was authorized by Bylaw No. 4 set out the items that were to be acquired with the proceeds of the loan and that were to become part of the common elements. There is nothing in these items that could not be a common element and, more significantly, there is nothing intrinsically illegal about a condominium corporation borrowing money for its common elements as they may be defined for that particular condominium project.

[32] The expressed purpose of the loan in the immediate case was to finance the purchase of "Equipment" to be part of the common elements. In reference to the purpose of the loan in the immediate case, several sections of the loan agreement should be noted:

(a) The preamble to the agreement states: "Whereas pursuant to a commitment letter dated September 4, 2001, the Lender agreed to provide the Loan to the Phase Ia Corporation [Peel 650] and Dayspring on its own behalf and on behalf of the Phase Ib Corporation [Peel 668] (collectively, the "Borrowers" to finance the Equipment on the terms and conditions herein set forth;"

(b) The loan agreement defines "common elements" as follows: "Common elements" means, together, the land building, fixtures, Equipment and structures and improvements of the Condominium, other than the Units, including without limitation, exterior landscaped areas, recreational facilities, parking facilities, hallways, elevators, and foyers and the Equipment.

(c) Included in the definition of "common elements" is "the Equipment" which is defined as follows: "Equipment" means the Equipment forming part of the Common Elements of the Condominiums as set out in Schedule A, of which that Equipment described in Part A of Schedule A is installed in and forms part of the Common Elements of Peel Condominium Plan No. 650, and the Equipment described in Part B of Schedule A is installed in and forms part of the Common Elements and/or units of a condominium project located at 3, 7 and 10 Dayspring Circle, Brampton, Ontario and known as the Phase Ib Project [Peel 668].

(d) Schedule A states:

PART A

Phase 1a Corporation

1. 24 Gas Furnace and Venting Systems serving each residential unit

PART B

Phase 1b Corporation

1. 176 gas furnace/ hot water tank systems, including rooftop HVAC Units

2. Enterphone system for Gatehouse (shared with Phase Ia Corporation)

3. Furnishings for Quest Suites (shared with Phase Ia Corporation)

4. Law Sprinkler System (shared with Phase Ia Corporation)

5. Village Hall Furnishings and Appliances (shared with Phase Ia Corporation)

(e) Article 2.02 provides that the Credit Facility is being made available to enable the Borrowers to finance the cost of the Equipment.

(f) Article 9.01 (j) is an affirmative covenant from the Borrowers that "the Borrowers shall use all Loans for financing of the Equipment."

[33] Pausing here, in my opinion, there is a contract here capable of lawful performance. Further, there is the intention of the parties to make a legal contract; provisions of the loan agreement require compliance with the *Condominium Act, 1998* (and other legislation). For example:

(a) Article 3.01 (c) requires as a condition for an advance under the loan that: "the Borrowers and Phase Ib Corporation [Peel 668] shall have delivered to the Lender certified copies of the Constitutional Documents and of the resolutions authorizing the borrowings hereunder and of the incumbency of the officers or the Borrowers and the Phase Ib Corporation signing this Agreement and any documents to be provided pursuant to the provisions hereof;

(b) Article 3.01 (g)(i) requires as a condition for an advance under the loan that: "the Condominiums have been completed and constructed in accordance with all relevant federal, provincial and municipal laws, requirements, standards, bylaws and codes, that the Units may be legally occupied, and that the Equipment has been installed in a good and workmanlike manner and is in good condition and working order;"

(c) Article 3.01 (i) requires as a condition for an advance under the loan that disclosure be made to unit purchasers about the loan. The article states: "the Lender shall have been provided with evidence satisfactory to the Lender that all of the Units have been sold to *bona fide* purchasers for value who are at arm's length to the builder and/or vendor of the Condominiums and that the financing constituted hereby has been disclosed to all such purchasers in the disclosure documentation required under the Act."

(d) Article 8.01 (a) is a warranty from the Borrowers that there is corporate authority. The warranty states that: "Each of the Borrowers has full corporate power and authority to enter into this Agreement and the Documents and to do all acts and execute and deliver all other documents as required hereunder or thereunder to be done, observed or performed by it in accordance with their terms."

(e) Article 8.01 (b) is a warranty from the Borrowers of valid authorization. This warranty provides that: "Each of the Borrowers has taken all necessary corporate action to authorize the creation, execution, delivery and performance of this Agreement and the Documents and to observe and perform the provisions of each in accordance with its terms.

(f) Article 8.01 (c) is a warranty from the Borrowers of the validity of documents and enforceability. This warranty includes the provision that: "Neither the execution and delivery of this Agreement or any Document, nor compliance with the terms

and conditions of any of them, (i) has resulted or will result in a violation of the Constitutional Documents of the Borrowers or any resolutions passed by the Board of Directors of each of the Borrowers or any applicable law, rule, regulation, order, judgment, injunction, award or decree, including without limitation the Act [defined to mean the *Condominium Act, 1998*, of Ontario, as amended, supplemented or replaced from time to time]."

(g) Article 9.01 (c) is an affirmative covenant from the Borrowers of compliance with Legislation that states: "The Borrowers shall do or cause to be done all acts necessary or desirable to comply with all material applicable federal, provincial and municipal laws requirements or standards including without limitation, the requirements of the Act [defined to mean the *Condominium Act, 1998*, of Ontario, as amended, supplemented or replaced from time to time] and all requirements of Environmental Law . . ."

[34] Thus, in my opinion, Corpfinance made a loan that had a lawful purpose that was consistent with the condominium corporation's enabling legislation and for which the proper formalities were followed. Further, Corpfinance intended that the loan comply with all legal requirements and indeed imposed legality as a term of the loan agreement.

[35] Upon analysis, it would appear that Peel 668's complaint is not so much that the loan is *ultra* vires, but rather that Dayspring failed to properly appropriate the funds to purchase the Equipment that was to be part of the common elements and that certain purchasers should not have to pay part of their purchase price for items that they would be charged for again as part of the common element expense. These may be legitimate complaints against Dayspring but, in my opinion, they do not make the loan itself *ultra vires.*

[36] An illustration of my analysis may be helpful. Peel 668 complains that the loan proceeds were used to pay for Bell phone wiring with a value of $113,600.00. There is nothing inherently illegal or inconsistent with the *Condominium Act, 1998* about phone wiring equipment being part of the common elements. However, under the loan agreement's definition of "Equipment," it is arguable that phone wiring does not fall within the particular definition of Equipment described in Part B of Schedule A, which is to be installed in and to form part of the common elements of Peel 668. If this is correct, then using the loan monies for this purpose would be an illegal performance of a contract otherwise capable of being performed lawfully. As I view the result, this would be a *malum prohibitum* but it would not be a *malum per se* that would vitiate the contract. Similar arguments may be made about other items in the list of disputed items and there is also the argument that the financing of the item for inclusion in the common elements was proper in any event.

[37] In this regard, it is, interesting to note that it was conceded during argument by counsel for Peel 668 that a portion of the loan proceeds would have to be repaid to Corpfinance, but she submitted that this was a matter that should be left for the trial judge. I see it differently. In *Hongkong Bank of Canada v. Wheeler Hldg Ltd.*, [1993] 1

S.C.R. 167, Sopinka, J. for the Court noted that the *ultra vires* doctrine to the extent that it still applies in Canada should be applied narrowly. He stated at p. 202:

> As is noted in *Palmer's Company Law* (24th ed. 1987), vol. 1, at pp. 143-44, "in modern law the courts are unlikely to hold a contract to be *ultra vires* the company unless, on a reasonable construction of the objects clause and the other clauses of the memorandum and articles, there are compelling grounds to arrive at that result."

[38] The case at bar is not a case such as *Strata Plan 1261 v. 360204 B.C. Ltd.*, *supra*, where the condominium corporation entered into a agreement allowing the defendant the exclusive use of all parking spaces in the parking garage, which was an arrangement where the condominium would lose the benefit of property that belonged to the common elements. The agreement in that case was inherently contrary to the provisions of the British Columbia condominium legislation. It was *malum per se*. In the immediate case, as I have already said there is nothing inherently illegal in a condominium corporation financing the purchase of equipment to be included in the common elements that it is to manage.

[39] Based on the evidence submitted on this motion for summary judgment, the $1.7 million loan was not *ultra vires*. The loan was *infra vires,* and if Dayspring performed the lawful loan improperly by failing to properly appropriate or by misappropriating loan monies, then Peel 668's remedy is against Dayspring.

[40] Similarly, in my opinion, Peel 668's allegations that that was a violation of the provisions of the *Condominium Act, 1998* that prohibit a declarant from making false and misleading statements and that there was inadequate and improper disclosure made to the unit purchasers do not make the $1.7 loan *ultra vires.* That there was inadequate disclosure of an *infra vires* loan would not nullify the loan. Although I obviously cannot and do not make any finding, the allegations against Dayspring and others about improper disclosure may be true, but Corpfinance is not the perpetrator of the wrongs and rather required that there be compliance with the Act.

[41] Peel 668 alleges that it has been the victim of oppressive or unfairly prejudicial conduct or conduct that unfairly disregards its interests. Once again, I cannot and do not make any finding apart from concluding that there is no genuine issue for trial that Corporate was not a party to any misconduct and its only role was a lender to the condominium project that sought compliance with the Act.

[42] The case of *Thomson v. Quality Mechanical Service Inc.* (2001) 56 O.R. (3d) 234 (S.C.J.) provides an analogy. In that case, C. Campbell, J. granted a motion for summary judgment brought by the Royal Bank against a shareholder who sought a remedy against a corporation and against the Royal Bank under the oppression remedy provisions of the *Ontario Business Corporation Act,* which are comparable to the oppression remedy provisions of the *Condominium Act, 1998.* The shareholder had a legitimate complaint against the corporation for oppression but did not have a claim against the Royal Bank because the acts of oppressive conduct must be the acts of those who control the

corporation. C Campbell, J. held that the oppression remedy was available against those responsible for the corporation but not against third parties, who had no role in the control or operation of the corporation.

[43] In the *Thomson* case, the Royal Bank had committed a wrong to the corporation and the oppression remedy was still not available. The position of Corpfinance is stronger in the immediate case because it was not a declarant under the Act and had no disclosure obligations to the unit holders and it was not a privy to any misconduct if any by the other defendants. If there has been non-compliance with the provisions of the *Condominium Act, 1998* then Corpfinance is also a victim in the sense that the non-compliance would be a breach of the loan agreement, which required compliance with the Act.

[44] This last comment brings me to Peel 668's reliance on equity and on its submission that Corpfinance knew or ought to have known that full and proper disclosure had not been made with respect to the loan as the grounds for relief against Corpfinance. In paragraphs 84 and 85 of its factum, Peel 668 states:

> 84. Courts are often faced with a situation wherein they must decide which one of two innocent parties is to bear the loss occasioned by a third. In this regard, the law has held that the loss should fall upon the party who could have prevented the loss through the exercise of reasonable care, or who has enabled the third party to occasion the loss.
>
> 85. A Court could find as between [Peel 668] and Corpfinance, it is Corpfinance who should bear any loss occasioned on the basis that;
>
> (a) Corpfinance is a sophisticated commercial lender;
>
> (b) Corpfianance was in a position to protect its interest unlike [Peel 668] who was vulnerable and had no party representing its interests;
>
> (c) Corpfinance knew or ought to have known the inherent risks in lending money in this type of arrangement whereby a developer causes a condominium corporation to become liable under a loan which it had no involvement in the structure thereof; and
>
> (d) Corpfinance's lack of due diligence in protecting its own interest under the Loan.

[45] With respect, once it is determined that the loan is *infra vires*, I do not see these submissions as the basis for equitable or other relief against Corpfinance. There must be some tether for equity's intervention, and a submission that equity should favour the weaker party is not a reason to deny Corpfinance's legal right to enforce its loan agreement.

[46] For these reasons I grant Corpfinance's motion for summary judgment. The parties may make written submissions with respect to costs within one month of the release of these Reasons for Decision.

Perell, J.

Released: February 9, 2006

COURT FILE NO.: 04-CV-269334
DATE: 20060209

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

PEEL STANDARD CONDOMINIUM CORPORATION NO. 668

Plaintiff

- and -

DAYSPRING PHASE I LIMITED, BRAMPTON PENTECOSTAL CHURCH INCORPORATED, CORPFINANCE INTERNATIONAL LIMITED, MERVYN OWEN THOMAS, LLOYD WISEMAN, ARNOLD NYHOLT, RICHARD MacKENZIE, LYNN YOUNGBLUT and 695598 ONTARIO LIMITED operating as MAPLE RIDGE PROPERTY MANAGEMENT

Defendants

- and -

MILLER THOMSON LLP

Third Party

REASONS FOR DECISION

Perell J.

Released: February 9, 2006