2011 CarswellBC 104, 2011 BCSC 83, [2011] B.C.W.L.D. 3716

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Ulansky v. Waterscape Homes Ltd. Partnership

Ronald David Ulansky, Dorothy Darlene Ulansky, Chad Stanley Ulansky, Margaret Dove, The Canadian Mortgage Network Ltd., Barbara MacDonald, Gerry Loughlean and Darlene Loughlean, Plaintiffs and Waterscape Homes Limited Partnership and Waterscape Homes (GP) Ltd., Defendants

British Columbia Supreme Court [In Chambers]

D.M. Masuhara J.

Heard: November 24-25, 2010
Judgment: January 26, 2011
Docket: Kelowna 85946

Counsel: M.W. Baron, for Plaintiffs

W. Holder, for Defendants

Subject: Property; Contracts

Real property --- Condominiums — Agreement of purchase and sale — Miscellaneous

Twelve plaintiffs, through three actions, sought rescission of agreement each had entered into for purchase and sale of unit in high-rise building constructed by defendants — There were also twelve actions commenced by defendants against various purchasers, seeking specific performance or alternatively damages — Plaintiffs brought application for summary judgment — Application granted — Disclosure of all permissible uses, primary and secondary, was required to fulfil defendants' obligations, and there was no mention of potential for short-term rental accommodations — Contracts declared unenforceable and defendants required to return deposits.

Cases considered by *D.M. Masuhara J.*:

Chameleon Talent Inc. v. Sandcastle Holdings Ltd. (2009), 2009 CarswellBC 3285, 2009

BCSC 1670 (B.C. S.C.) — followed

Chameleon Talent Inc. v. Sandcastle Holdings Ltd. (2010), 2010 CarswellBC 1488, 2010 BCCA 300 (B.C. C.A.) — followed

Statutes considered:

Interpretation Act, R.S.B.C. 1996, c. 238

s. 8 — considered

Real Estate Development Marketing Act, S.B.C. 2004, c. 41

Generally — referred to

Pt. 2 — referred to

s. 1 "disclosure statement" — considered

s. 1 "material fact" — considered

s. 1 "material fact" (a) — considered

s. 1 "misrepresentation" — considered

s. 14 — pursuant to

s. 14(1) — referred to

s. 14(2) — referred to

s. 14(2)(b) — considered

s. 23 — considered

Rules considered:

Rules of Court, 1990, B.C. Reg. 221/90

R. 18A — pursuant to

APPLICATION by plaintiffs for summary judgment.

2011 CarswellBC 104, 2011 BCSC 83, [2011] B.C.W.L.D. 3716

***D.M. Masuhara J.*:**

Introduction

1 This proceeding relates to three separate applications for Summary Judgment under former Rule 18A. Twelve plaintiffs are seeking through three actions the rescission of an agreement each has entered into for the purchase and sale of a unit in a high-rise building referred to as "the Skye Tower" (or "the Development") constructed by the defendants in Kelowna, B.C. (the "Contracts"). I am told there are also twelve actions in the Vancouver registry commenced by Waterscape Homes against various purchasers of units in the Development seeking specific performance or alternatively damages.

Background

2 The Skye Tower is a residential high-rise tower located at 1-76 Sunset Drive in Kelowna B.C. It is part of the Waterscapes Development Project owned by the defendant, Waterscapes Homes Limited Partnership (the "Skye Project"). The Skye Project is the third of a nine phase strata development. It is a high-rise long term residential use project.

3 The Skye Tower is comprised of 188 strata units of which 40 are one - bedroom and den configurations. The project also includes designated parking areas and shared amenities such as a swimming pool and hot tub which are shared among all phases of the overall development.

Development process

4 In 2006, an application was made to the City of Kelowna for a development permit with respect to the Skye Project. The Skye Project later required a development variance permit because the developer wished to vary some of the requirements set out in the Zoning Bylaw. Both the initial development permit and the development variance permit provided permission for the development of the Skye Project as a "multiple unit residential dwelling tower". Also, all building permit applications and building code compliance materials relating to the Skye Project spoke to the requirements of a "new residential apartment building".

5 The Skye Project sought and obtained a development variance permit in order to increase the height of the Skye Tower by 10 storeys and to reduce the number of parking stalls.

Zoning

6 The Skye Project is zoned as "RM6 - High Rise Apartment Housing" pursuant to the City of Kelowna Consolidated Zoning Bylaw No. 8000 (the "Zoning Bylaw").

7 The purpose of an RM6 zoning designation is stated to provide a zone for high density high rise apartments. The principle uses outlined in the Zoning Bylaw for the RM6 Zone are:

(a) multiple dwelling housing;

(b) congregate housing;

(c) group home, major; and

(d) supportive housing.

8 Section 13.12.3 of the Zoning Bylaw also lists possible secondary uses. One such permissible secondary use is (d) hotel/motel accommodation within a multiple residential unit.

Sale of Units

9 The plaintiffs were provided with a disclosure statement for the Skye Project dated July 23, 2007 (the "Disclosure Statement") which was prepared and filed pursuant to the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 ("*REDMA*").

10 The Disclosure Statement was amended on four occasions between August 29, 2007 and August 8, 2008. It provided the following description of the permitted use of the property:

> **2.2 Permitted Use**
>
> Most of the development property is zoned for residential purposes and in phases 1, 2, 3, 4, 5 and 6, all of the strata lots are intended for residential purposes only. It is possible that the strata lots in phases 7 and 9 of the development may be used for commercial or other purposes not ancillary to residential purposes. Any non-residential use must comply with the Bylaws and zoning of the City of Kelowna.

11 Each of the twelve plaintiffs signed contracts of purchase and sale on various dates for the purchase of their respective strata lot unit in the Skye Project. Pursuant to the contracts of purchase and sale, the defendants issued Notices of Completion which were delivered to each of the plaintiffs in connection with their own contract of purchase and sale.

Discovery Bay

12 At the time they entered into the contracts, several of the plaintiffs resided across the street from the Development in a property called Discovery Bay. Discovery Bay is also zoned RM6 but permits short-term rentals. The amended disclosure statement for Discovery Bay specifically states the fact that short-term rentals are permitted under RM6 zoning. As a result of their unhappy experiences living in that environment, the plaintiffs decided to move. They did not want to live in a development where short-term rentals were permitted because of constantly changing neighbours; noisy parties in the units and common areas; and the lack of regard by such guests for other

residents, the premises and surrounding area.

13 The plaintiffs agreed to purchase the units in the Development with the intention of residing in the Development as their personal residences.

Problems after the sale

14 The plaintiffs complain that short-term rentals are permitted and are occurring in the Development. There are online advertisements for short-term rentals within the Skye Tower. Also, the City of Kelowna is in the process of issuing business licenses to individuals to permit short-term rentals in the Development. The plaintiff, Mr. Ulanksy, has obtained such a licence.

15 The strata bylaws for the Development do not restrict the ability of owners to engage in short-term rentals. Furthermore, minutes from a strata council meeting indicate that short-term rentals are being contemplated. The strata council is adopting various criteria in order for owners to engage in short-term rentals.

16 As a result of these problems, the plaintiffs have refused to complete the purchase of their respective units. The defendants have issued a demand letter to each plaintiff requiring them to complete the purchase.

17 It is this conflict that gives rise to the present action.

Arguments of the Parties

18 The plaintiffs submit that the defendants failed to disclose all "material facts" as defined in *REDMA*, relating to the Development. By omitting to set out in the Disclosure Statement the fact that the zoning of the Development also allowed for short-term rentals, a permissible secondary use, the plaintiffs say that the defendants misrepresented a material fact regarding the Development. As a result, the plaintiffs state that the failure to disclose a material fact constitutes a breach of s. 14(2)(b) of *REDMA* and that the contracts are therefore unenforceable by the developer pursuant to section 23 of *REDMA*.

19 The defendants submit that it is not in breach of its disclosure obligations. It is submitted that short-term rentals of units was not intended by the developer; and that short-term rentals are not permitted under the terms of the Zoning Bylaw or other building code provisions. The defendants state that the building has not been designed, approved or built to meet the requirements for a hotel/motel and as a result, short-term rentals are not possible as they are not legally permitted. Therefore disclosure of such rentals was neither relevant nor required. More specifically, the defendants say:

- During the building permit application process, there was no building code review conducted, nor letters of assurance provided, in respect of hotel/motel rental usage;

- The Skye Project does not have a handicap assisted entrance, an off-street loading bay, or a hotel use entrance lobby;

- The strata units do not have visual warning systems, such as strobe lights, nor wheelchair accessible bathrooms and doorways;

- There are insufficient off-street parking stalls;

- Emergency planning requirements established under Part 2.8 of the B.C. Fire Code do not comply with the requirements for hotel/motel use; and

- The development permit and development variance permit sought and obtained by the developer pursuant to s. 920 of the Local government Act were not issued for hotel/motel use.

20 The defendants further state that the strata council's decision to allow some owners to rent out their units is a contravention of the Strata Bylaws which prohibit any uses that are "illegal". As such, the defendants submit that the proper remedy for the plaintiffs arises following the completion of purchase of their respective units; at which time they will have an available remedy against the strata council or individual owner in the Skye Tower who engages in the impermissible act of short-term rental of his or her strata unit.

21 In the alternative, the defendants submit that they have met their disclosure obligations in *REDMA*. The defendants argue that it was not required to list all of the potential possible uses in a zone; only the principle usage intended for the project.

22 Finally, the defendants argue that there is no evidence that any short-term rentals have or will take place in the Skye Project.

Issues

23 The issues raised can be distilled to the following:

1. Is hotel/motel accommodation within a multiple residential unit a permitted secondary use of the Skye Tower?

2. If yes, was the developer obliged to disclose the fact that hotel/motel accommodation within a multiple residential unit was a secondary use of the Skye Tower? In other words, does non-disclosure of this fact amount to a breach of s.14 of *REDMA* such that the agreements for purchase and sale are now unenforceable?

Issue 1

24 Is hotel/motel accommodation within a multiple residential unit a secondary use of the Skye Tower?

25 The defendants state that the units in Skye Tower cannot legally be used as hotel/motel accommodation, and as such, no duty to disclose arises under *REDMA*. The defendants point to the fact that the Development does not meet the requirements in the Zoning Bylaws, Building Codes, etc. related to hotel developments. Therefore, it is important to determine whether it is, in fact, legal for a unit within the Development to be used as a short-term rental, so as to give rise to a duty of disclosure on the part of the developer.

(a) Analysis

26 The starting point for determining whether the Skye Tower allows, as a secondary use, hotel/motel accommodation within a multiple residential unit is in the Zoning Bylaw.

27 The definitions of a principal and secondary use are provided in section 2:

> PRINCIPAL USE means the main or primary use of land, buildings or structures which is provided for in the list of permitted uses in the zones of this Bylaw.
>
> USE, SECONDARY means those uses in the lists of secondary uses in the zones of this Bylaw which must be in conjunction with a principal use. For example, a home based business is a secondary use, not a principal use.

28 The relevant provisions under the Zoning Bylaw for the Skye Tower are found in s. 13.12. This section applies to High Rise Apartment Housing, zoned as RM6. Section 13.12.1 states that the purpose of RM6 "is to provide a zone for high density high rise apartments". The section provides for the following principal and secondary uses:

> **13.12.2 Principal Uses**
>
> The principal uses in this zone are:
>
> (a) multiple dwelling housing
>
> (b) congregate housing
>
> (c) group home, major
>
> (d) supportive housing
>
> **13.12.3 Secondary Uses**

The secondary uses in this zone are:

(a) agriculture, urban

(b) care centres, major

(c) community recreation services

(d) home based businesses, minor

(e) hotel/motel accommodation within a multiple residential unit

(f) participant recreation services, indoor

(g) personal service establishments

(h) retail stores, convenience

29 Section 13.12 goes on to regulate various aspects of the developments on lands zoned as RM6, such as the types of buildings and structures that are permitted, the minimum lot size, and restrictions on the sizes of accessory buildings, floors and yards.

30 Subsection 13.12.7 prescribes other regulations that apply. It provides specific regulations for certain secondary uses, such as indoor participant recreation services and personal service establishments. Subsection 13.12.7(d) also states that other regulations may apply. However, there are no specific regulations anywhere in the Zoning Bylaw that apply to "hotel/motel accommodations within a multiple residential unit".

31 Notably, the term "hotel/motel accommodation within a multiple residential unit" is not defined in the Zoning Bylaw. Nor is "multiple residential unit" defined. However, as noted above, RM6 zoning relates to "high density high rise apartments". Section 2.1.4 of the Zoning Bylaw provides that any terms that are not defined are given their common, ordinary meaning:

> 2.1.4 Words, phrases, and terms neither defined in this section nor in the *Local Government Act* shall be given their usual and customary meaning.

32 On the other hand, the terms hotel and motel are defined in the section 2.3.3 of the Zoning Bylaw. For instance, "Hotel" is defined as:

> a building or part thereof with a common entrance lobby and shared corridors, which provides sleeping accommodation for transient visitors and may include public facilities such as restaurants, banquet, beverage, meeting and convention rooms, recreation facilities, and personal service establishments for the convenience of guests. The maximum length of stay is no more

than 240 days.

33 Section 2.3.3 states that any words, terms or phrases defined under that section shall have the meaning assigned to them wherever they occur in the Zoning Bylaw. Based on this section, it might appear as though "hotel/motel accommodation within a multiple residential unit" would referentially incorporate the meaning of 'hotel/motel'. But subsection 2.3.2(b) suggests otherwise. It states that where a specific use does not conform to the wording of a particular use class, it is to be included in the use class that is most appropriate in character and purpose. Section 2.3.2(b) reads as follows:

> (b) Where a specific use does not conform to the wording of any use class definition or generally conforms to the wording of two or more definitions, the use conforms to and is included in that use class which is most appropriate in character and purpose.

[Emphasis Added]

34 This section would seem to apply to the specific use of a "hotel/motel accommodation within a multiple residential unit", which includes aspects of both hotels/motels as well as multiple residential units; this definition does not clearly fit within either class.

35 In my view, the fact that a use class in the Zoning Bylaw contains the term "hotel" or "motel" does not necessarily import the definition and corresponding regulations for hotel or motel use. In coming to that conclusion, I refer to the fact that under section 2, "apartment hotels" are expressly defined as "apartment housing having a principal common entrance, cooking facilities and furnishings within each dwelling. This does not include any commercial uses except when specifically permitted in the zone." This is a clear example of a term that refers to "hotels" but does not referentially incorporate all of the aspects of a hotel. I consider this an indication that the Zoning Bylaw intends to treat the use of the term "hotel" differently when it is a part of a composite definition.

36 I note that several other provisions in the Zoning Bylaw refer to hotels and motels, though they do so without reference to a "multiple residential unit". In most other instances in the bylaw, the word hotel and motel is used on its own.

37 Under zone RM6, the use is qualified by the terms 'accommodation within a multiple residential unit'. As with the apartment hotel, it is reasonable to conclude that the intent of the bylaw is for this specific use to be interpreted differently.

38 It is therefore useful to look at which use class is most appropriate in character and purpose for "hotel/motel accommodation within a multiple residential unit" to determine whether the intent of the bylaw is for the other sections which regulate hotels and motels to apply.

39 As noted under s.13.12.1, the purpose of the RM6 zone is to provide a zone for high density

high rise apartments. Hotel/motel accommodation within a multiple residential unit must be understood within the context of short-term rentals in a residential high rise apartment complex; a secondary as opposed to primary use. Short-term rentals of particular units do not amount to a hotel in the conventional sense. Conventional hotel rooms are not typically sparsely placed beside residential units. A residential apartment building which allows for some units to be temporarily rented out, as a secondary use, would arguably not require a lobby to check-in guests, or a loading dock to handle high volumes of people entering and exiting a hotel. Short-term rentals are envisioned only as a secondary use, not a primary use. There are different demands and expectations in a building that is primarily residential in nature compared to one that is a hotel.

40 The definition of a hotel envisions "a building or part thereof with a common entrance lobby", which to me suggests a fully dedicated hotel building or perhaps one tower within a building which presents itself as a hotel; not a residential apartment complex with a small number of units rented out on occasion. I would not understand the words "part thereof" to refer to a couple of rooms; rather, those words seem to refer to a particular designated area of the building.

41 I find further support for this position in the fact that a hotel/motel must, in most cases, be situated on land that is zoned as Commercial under section 14. It is therefore subject to very different restrictions compared to a development on an RM6 zone. This again suggests that the Zoning Bylaw treats a hotel/motel differently from "hotel/motel accommodations within a multiple residential unit". It is unlikely that restrictions related to a hotel/motel as a primary use would apply to hotel/motel accommodation within a multiple residential unit as a secondary use.

42 The same can be said for the restrictions imposed on Hotels and Motels under the BC Fire Code and Building Code. For instance, section 3.8.2.31 of the BC Building Code prescribes the manner in which Hotels and Motels must be accessible by persons with disability. However, since hotels and motels are not defined in the Building Code, they have the meanings that are commonly assigned to them (s. 1.2.1.1(1) Division B, Part1). Again, it would seem that a hotel would be considered a development whose primary use is as a hotel/motel, rather than the secondary use of a number of units in a residential apartment building for short-term rental. The provision relating to access contemplates numerous sleeping units and storeys which are generally accessible to the public. The wording of the section does not seem to contemplate a short-term rental in a residential apartment building. I should note, however, that the BC Fire Code is not as clear with respect to the interpretation of hotel/motel, since section 2.8.2.7(2) simply refers to hotel and motel bedrooms.

43 In any event, it appears the Zoning Bylaw treats hotels differently from "hotel accommodation within a multiple residential unit". As a result, where the Zoning Bylaw refers to a hotel, the same provisions would not apply to a hotel/motel accommodation within a multiple residential unit.

44 Given my finding that there are no additional restrictions which apply to the secondary use of "hotel/motel accommodation within a multiple residential unit" under the Zoning Bylaw or related codes, it would seem to be legal and permissible for residents of Skye Tower to rent their

units for short periods of time. As such, the next question would be whether this secondary use ought to have been disclosed.

Issue 2: Non-Disclosure of secondary use

(a) Duty of Disclosure

45 Pursuant to section 14 of *REDMA*, a developer who intends to market a development must prepare and file a disclosure statement. A disclosure statement is defined in s. 1 of *REDMA*:

> "disclosure statement" means a statement that discloses material facts about a development property, prepared in accordance with section 14(2) [*filing disclosure statements*], and includes any amendment made to a disclosure statement;

46 The requirements of a disclosure statement under the *REDMA* are set out in s. 14 as follows:

> **Filing disclosure statements**
>
> 14 (1) A developer must not market a development unit unless the developer has
>
> (a) prepared a disclosure statement respecting the development property in which the development unit is located, and
>
> (b) filed with the superintendent
>
> (i) the disclosure statement described under paragraph (a), and
>
> (ii) any records required by the superintendent under subsection (3).
>
> (2) A disclosure statement must
>
> (a) be in the form and include the content required by the superintendent,
>
> (b) without misrepresentation, plainly disclose all material facts,
>
> (c) set out the substance of a purchaser's rights to rescission as provided under section 21 *[rights of rescission]*, and
>
> (d) be signed as required by the regulations.

47 The form and content required in a disclosure statement under *REDMA* is provided in the Superintendant's Policy Statement 1, entitled "Disclosure Statement Requirements for Develop-

ment Property Consisting of Five or More Strata Lots" (the "Policy Statement"). With respect to disclosure obligations under "permitted uses", the Policy Statement requires as follows:

> **2.2 Permitted use**
>
> Describe the zoning applicable to the development property and the permitted use of all strata lots in the development. State whether any strata lot may be used for commercial or other purposes not ancillary to residential purposes.

48 Section 23 of *REDMA* provides that, in the event of a breach of any provision of Part 2, which includes s. 14 regarding disclosure statements, any agreement to purchase a development unit is unenforceable:

> **Agreements void for non-compliance**
>
> 23 A promise or an agreement to purchase or lease a development unit is not enforceable against a purchaser by a developer who has breached any provision of Part 2 *[Marketing and Holding Deposits]*.

(b) What is a material fact?

49 The terms "material fact" and "misrepresentation" are defined in section 1 of *REDMA:*

> "material fact" means, in relation to a development unit or development property, any of the following:
>
> > (a) a fact, or a proposal to do something, that affects, or could reasonably be expected to affect, the value, price, or use of the development unit or development property; (emphasis mine) ...
>
> "misrepresentation" means
>
> > (a) a false or misleading statement of a material fact, or
> >
> > (b) an omission to state a material fact;

50 The case law has further elaborated on what is required in terms of disclosure of material facts. In *Chameleon Talent Inc. v. Sandcastle Holdings Ltd.*, 2009 BCSC 1670 (B.C. S.C.), the court set out the following test:

> 48 As to whether the term "material fact" in *REDMA* ought to be defined subjectively or objectively, the legislation being new, there are few authorities on which one may rely directly. The defendant submitted for the purpose of analogy the decision of Russell J. in *Bigleaf*, who

at para. 38 adopted this quote from p. 11 of *Dureau*:

> I adopt the meaning given to the words "material fact" in the *Securities Act* as appropriate to the meaning of "material" in section 59 of the *Real Estate Act*. There are differences in the legislation, but the definition is one which, in my view, accords with common sense. In other words, the word "material" is not specifically directed towards the loss that would be suffered if the material fact were found to be false, but rather to the effect which the material fact has, or is deemed to have, on the purchaser's willingness to buy, and for what price. In other words, you look at the effect which the material fact would have on the purchaser's willingness to buy for the price offered, and if the statement is such that it could reasonably affect his judgment whether to buy, and for what price, that is material for the purpose of this section.

49 The Court of Appeal in *Jameson* also mentioned at para. 43 that an objective test must be applied to determine whether a fact is material namely, would a reasonable person would conclude that the fact in issue would affect "the value, price, or use of the development unit?"... (emphasis mine)

51 The Court of Appeal affirmed the summary trial judgment in 2010 BCCA 300 (B.C. C.A.), and added as follows:

> As indicated, a "material fact" is a defined term: a fact, or a proposal to do something, that affects or could reasonably be expected to affect the price, value, or use of a unit. Under the *Act*, a disclosure statement must plainly disclose all material facts. ... The requirements imposed on a developer under the *Act* to file and deliver disclosure statements, and amendments to such, disclosing material facts cannot turn on the knowledge possessed by any given purchaser or prospective purchaser.
>
> [Emphasis Added]

(c) Applied to the facts

52 The question here is whether the Skye Tower's having as a permissible secondary use "hotel/motel accommodation within a multiple residential unit" was a material fact that the developer needed to disclose pursuant to its statutory obligations in s. 14 of *REDMA*. In short, is short-term rental use a material fact within the meaning of the act?

53 The defendants submit that its obligations under *REDMA* only require it to disclose the principle usage in a given zone. In light of the definition of a material fact in the act, the relevant case law, the wording in the Policy Statement and the fact that this section has, as its remedial purpose, the aim of ensuring full and plain disclosure by a developer to balance the inequality of information between consumers and sellers. All of these sources suggest that all permitted uses must be disclosed.

54 In adopting the principles set out in *Chameleon Talent Inc.* as well as the definition of "material fact" in *REDMA*, the test to be applied is whether a reasonable person would conclude that the fact in issue would affect "the value, price, or use of the development unit". In my opinion, a reasonable person would consider the fact that some units can be used as short-term rentals a material fact, since it affects the "use" of a development unit.

55 Use is defined in the Zoning Bylaw as meaning "the purposes for which land or a building is arranged or intended, or for which either land, a building, or a structure is, or may be, occupied and maintained." This definition is useful as an interpretive guide since developer's would likely refer to the Zoning Bylaw when considering their duties of disclosure under *REDMA* and under the Policy Statement. This definition does not expressly restrict the word "use" to primary uses. A proper interpretation would be to construe the provision broadly given the purpose of disclosure duties under *REDMA*, which includes consumer protection.

56 Also, according to s. 8 of the *Interpretation Act*, R.S.B.C. 1996, ch. 238, "every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects." Taking a purposive and remedial interpretation to the term "use" would again result in a duty to disclose all uses that would affect a potential purchaser's decision. It would not be in keeping with an obligation of disclosure to restrict this term to only primary uses. Rather, all permissible secondary uses would fall under a duty to disclose so that consumers are truly informed of the nature of their real estate purchase.

57 Further support is found in s. 2.2 of the Policy Statement, which requires the developer to state "the permitted use of all strata lots in the development" and specifically whether "any strata lot may be used for commercial or other purposes not ancillary to residential purposes." This wording clearly contemplates the disclosure of secondary uses that fall within a particular zone such as, in the case of an RM6 zone, major care centres and urban agriculture. These are not "ancillary uses" but rather, secondary uses of a strata lot.

58 The defendants state that listing in a Disclosure Statement a menu of multiple potentially possible uses in a zone would tend to mislead and confuse rather that assist a prospective purchaser of a strata unit. With respect, the contrary appears to be true. It would assist a potential purchaser to know the permissible uses in a zone in making a purchasing decision. Even a possible use can become an eventuality; as such a potential purchaser should know of all uses for that particular development which are permitted.

59 In light of my finding that disclosure of all permissible uses, primary and secondary, is required to fulfil a developer's obligations under s. 14 of *REDMA*, and that there is no mention of a potential for short-term rental accommodations with respect to the Skye Tower, I find that the developer has failed in this regard.

60 As a result of this failure to disclose all material facts within the meaning of *REDMA*, the

contracts are unenforceable by the developer pursuant to section 23 of *REDMA*.

Conclusion

61 In the result, the contracts are declared unenforceable and the defendants are required to return to the plaintiffs their deposits and additional deposits they provided under the contracts.

Application granted.

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