
ABOUT CONDO

JANUARY 2012 SELECTED TWEETS

Last year our law firm started “Facebooking” and “tweeting” articles, cases and commentary of interest related to condominiums. The practice continues, and we have obtained almost 10 times the number of Facebook “friends” as we had last December along with a number of additional “followers” on Twitter. Here is our January installment of selected comments.

WHY USE A LAWYER: LIABILITY FOR LIEN PROCESSING?

In response to a U.S. newspaper columnist’s question as to whether a condominium manager amending condominium documents was practicing law without a license, on January 2, we wrote:

An interesting consideration: are condo managers and directors at fault for the unlicensed practice of law when they seek to carry out statutory lien processes or amend condominium documents?

The suggestion that a manager amending condominium documents is practicing law without a license was made recently by a U.S. columnist, but it is a sobering consideration in any jurisdiction. It is equally, if not even more, relevant in regard to processing Notices of Lien, which many management companies choose to do without consulting lawyers.

Even if a manager or board member doing such work would not be charged with providing legal services without a license, they certainly open themselves, and the condominiums they serve, up to significant potential costs and other problems. For example, in our experience, the majority of management companies that process their own Notices of Lien commit frequent errors that result in delays and additional costs that could otherwise have been avoided.

The cost of legal services is, of course, a valid consideration for any business, person or condominium; but the costs of not using legal services is often much harder to bear.

REALLY BAD NEIGHBOURS

The BC Court has ordered an extraordinarily abusive unit owner to sell her unit. The owners swore at, insulted and intimidated neighbours ruthlessly, with conduct that in a former day and age might have found them not merely outside of their condominium but inside of an

institution. The case was a first in that province, but not in Canada overall. On January 18, we wrote:

Kudos to the BC Court for taking seriously the fact that condominiums are collectives, and that a bad apple sometimes does need to be thrown out rather than left to spoil the bunch.

This isn't the first time a court has ordered that a unit owner sell his unit. Our firm was involved in a similar case for a Kitchener condominium corporation that was resolved along the same lines last year. The unit owner had engaged in abusive, aggressive conduct toward the manager, board and other unit owners for years. Even a little time in jail because of it did not lead him to mend his ways. The court ordered he vacate the unit permanently, immediately, and list it for sale.

Stories like this remind us of the fact that some people just shouldn't live in condominiums. If you can't acknowledge, and agree, that what you do impacts others, and that basic respect and consideration for others are essential (let alone self-respect and common decency), then condo living is not for you.

APPROPRIATE ENFORCEMENT

After reviewing a human rights claim by a unit owner whose noise complaints were not agreed with by their condominium board, we thought it a good opportunity to remind everyone that sometimes a little self-second-guessing is part-and-parcel of peaceful condominium living.

The "big guns". Everybody's heard of them. Almost no one likes it when they are reached for too soon, or without good cause.

An allegation of discrimination under the Human Rights Code is a "big gun". It attacks not only the conduct but also, generally, the character of the allegedly guilty person.

Based on the decision of the Ontario Human Rights Tribunal in Dobric v. Brookfield Residential Services (CanLII - 2012 HRTO 171), Mr. and Mrs. Dobric appear to have decided to take advantage of one conversation in which their native language was questioned to allege that the board and management were discriminating against them when advising that their noise complaint about a neighbour was not valid and not going to be acted upon. The Human Rights Tribunal said, in effect, that they were wrong to do so.

Human Rights law is there to serve the needs of people who are subjected to genuine unfairness on the basis of fundamental traits that are considered to be above and beyond fair attack. It is inappropriate to use it as a sword to wield against somebody who simply doesn't agree with your perspective or do what you want him or her to do.

Having said that, it is also fair to consider the other side of the equation. If their facts were accurate, and the manager actually had expressed, even implicitly, some negative attitude toward the Dobrics on the basis of their native language or national origin, it is entirely understandable that they would be a little sensitive to, and suspicious of, any subsequent appearance of mistreatment or disregard. Is that a correct basis for a human rights complaint?

Not always. Not in this case, certainly. But their feelings, if they were being genuine, are not beyond our understanding.

In regard to that matter, then, it behooves boards of directors and managers of condominiums (as well as people wielding authority in any context) to be aware of, and avoid, insensitivity, unkindness or disregard of any kind, and particularly where such conduct is associated with those facts about a person that are of an inherent nature and value, such as age, race, religion, country of origin, gender, and so forth.

In short: always treat others with respect. Not only is it the right thing to do anyway, it can avoid a multitude of troubles (such as, an allegation of discrimination under the Human Rights Code).

REASONABLE TO COLLECT RESERVES

In New Brunswick there has been some debate about the appropriateness of their new mandatory reserve funds – something we in Ontario are quite used to by now, and generally seem not too displeased with. Even so, even here some owners voice those same complaints along the lines of, “why should I contribute to the reserve fund? It’s not like I plan to live here forever!”

British Columbia also requires a reserve (or “contingency”) fund to be collected, but this seems to be optional for some condominiums. This month, a BC columnist, Tony Gioventu, shared his opinions with his readers about the value of collecting for contingencies, which included the major impact an inadequate reserve fund can have on the value and marketability of units. In addition, he reminded current home owners that their obligation to contribution is based on their current, not future, use of the property. We expressed our agreement on January 30:

In addition to other points, Tony Gioventu's sage response deserves attention in regard to the question of why someone should pay into the building's reserves if he or she doesn't plan to be an owner for much longer.

Because, he writes, "you have used the life of the building components over the years."

So many condominium owners take a very short term and self-interested approach to their obligations. They don't see (or don't wish to acknowledge) that their use of the property now contributes to the costs of its major repairs or replacements in the future. They'd rather save pennies in their own pockets today, and foist dollars of cost onto future purchasers.

We also participated in a conversation about the New Brunswick question on *cbc.ca* earlier in the month, offering the following remarks:

Reserve funds are good practice and good ethics.

What most people tend to miss is that the law relating to condominium ownership takes a position on an ethics of shared ownership which includes the necessity of fairly sharing responsibility not only horizontally (amongst current owners) but also vertically (as between

owners past and present). Property owners whose sole concern is the amount of money they are spending today are, from that vantage point, not behaving ethically.

From a practical point of view, they are also likely behaving inefficiently and ineffectively in so far as the care of the property is concerned. The lack of saved funds for the major repair of the property is, and should be, a significant consideration for buyers.

Case in point: when Clifton Kok LLP bought a building for our new offices, we successfully talked the seller down to a price that was nearly 1/3 of the original asking price simply because the building had never been cared for. Knowing we would have to sink considerable money into the exterior brick, roofing and foundation, there was no way we would settle on a price without taking that into account.

Likewise, any condo buyer who is paying attention, would never want to pay the going market rate for a condominium unit where there is no adequate reserve fund to take care of the major work coming down the pike.

You can find new comments and current case law at least weekly and even send us general questions (not pertaining to specific legal matters) on Facebook at <http://www.facebook.com/CKLegal> and on Twitter by following [@CliftonKokLLP](#).

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