



# About Condo

## CASE LAW UPDATE, MARCH 2007

### Kitchener Court Helps to Define Proper Standards of Competent Professional Condominium Management

March 8, 2007: *Larlyn Property Management Ltd. v. Waterloo North Condominium Corp. No. 71, et al.*, [2007] O.J. No. 1044 (Ontario Superior Court of Justice, Small Claims Court - Kitchener, Ontario) S.M. McGill Deputy J.

#### Facts

The Beechwood Villas condominiums (five corporations united under a trust arrangement, which is not unfamiliar in this region) were under management by Larlyn Property Management Ltd. ("Larlyn") from January 2000 until July 2003.

With respect to this brief period of responsibility, during which time Larlyn had significantly high turnover of management personnel and for periods had no manager specifically assigned to the properties, Deputy Justice McGill describes a litany of financial mismanagement, confusion and failures by Larlyn to advise the condominiums about changes and requirements under the *Condominium Act, 1998*, when it came into force. The benefit of the doubt might be given to Larlyn given its high turnover during this period; however, the Deputy Judge preferred to rely on the evidence of the trust's former board member than that of Larlyn's representative at court who admitted to having relatively little personal knowledge of the condominiums.

According to the court's judgment, after Larlyn's contract was terminated, the condominiums hired Sanderson Management Inc. of Kitchener, which then had the arduous task of recreating missing and incomplete financial records (what the court describes as "*the chaos of the financial situation*") and providing the condominiums with correct advice with respect to the requirements and new provisions under the new legislation.

It appears that the claim was commenced by Larlyn to recover a little over \$1000 in management fees and expenses which were unpaid by the condominiums. The condominiums counter-sued for damages on account of Larlyn's management practices.

#### Judgment

The court awarded Larlyn only \$626.38 for certain hard costs it had legitimately incurred in the course of its management of the condominiums. Larlyn was not entitled to its claim for outstanding management fees from its last month under its contract.

The court also awarded the condominiums their claims against Larlyn in the maximum Small Claims amount of \$10,000 (the actual total of the damages was \$10,147.70) and further awarded costs in favour of the condominiums in the amount of \$600.

### Application

There are several lessons to be gained by professional condominium managers from this case.

In the course of pronouncing this judgment, the Deputy Judge provides the following salient advice to condominium management professionals (bold and underline emphasis added):

***A professional condominium property manager must be familiar with the requirements of all applicable legislation and must advise the board of directors of a condominium regarding its obligations under the condominium legislation. It must keep abreast of changes and advise its client of new requirements. ... It is the responsibility of the property manager to advise a board on its obligations under the legislation and to resign if the board demands that the manager violate the law. This is the standard of care required of every competent professional property manager.***

Specific warnings were issued against:

- pooling operational accounts of condominiums into a single account, even where they work together under a management trust, and likewise with respect to the condominiums' reserve fund accounts;
- failing to follow the procedures in the *Condominium Act, 1998* with respect to dispensing with the requirement for audited financial statements;
- undue delay in the production of financial statements required at annual general meetings;
- failing to advise the condominium board of provisions of the *Condominium Act, 1998* that would allow the condominium to achieve its goals (in this case, amalgamation);
- failing to make records available to auditors and other professionals as and when needed;
- failure to transfer records and information in a timely manner to new management once the manager's contract is terminated.

This case is also a warning to professional condominium managers that where these standards are not met, *not only will those managers likely not be entitled to payment of their fees, but they could also get successfully charged with all the costs and expenses of the condominiums who have to clean up after them.*

Michael H. Clifton (March 2007)