

CONDO CORPORATIONS MUST TREAD CAREFULLY ON STATUS CERTIFICATES

Buying a condominium? Have you received the status certificate? Better question; can you trust the information on the status certificate that you received? What if the status certificate is misleading, and you are stuck with a whopping amount of damages? Was the seller obligated to disclose those damages prior to the sale? Should your lawyer have spotted the damages prior to your putting pen to paper? Should the condominium corporation get away with sending out misleading documents? Who's on the hook?

There is no longer any room for error when it comes down to the preparation of status certificates by condominium corporations following the 2015 Ontario Court of Appeal decision concerning a plaintiff who bought one of 39 condominium townhouses on the Toronto waterfront in the Grand Harbour development on Lakeshore Blvd. W.

Prior to the Plaintiff's purchase, the property was owned by Richard Weldon, who himself had bought the townhouse from the court-appointed receiver when the developer had financial problems.

When Richard first purchased the property, he bought it as a two story townhouse with a common element attic above the second floor. Following his purchase of the property, he improperly expanded the unit into the attic, and built new stairs, windows and skylights, a bathroom, sitting area and bedroom, thereby adding 862.2 square feet of space to the unit. These changes were made despite the fact that the legal designation of the space wasn't converted from common area to a space belonging solely to the unit below.

Richard later sold the property to the Plaintiff and did not disclose the illegal construction. The status certificate provided by the property manager stated that there were no continuing violations of the condominium declaration, bylaws or rules. Moreover, the plaintiff was never shown any condominium plans and reasonably assumed that she was buying everything from the ceiling of the third floor down to the basement parking space.

After purchasing the property, and prior to moving in, the Plaintiff began renovations of her own, during which she realized that the third floor had actually been built into attic space which she did not own. She subsequently sued the condominium corporation, the property manager, condominium board members, and employees of the property manager as well as her lawyer. The case became a mess as needless to say, the defendants initiated crossclaims against one another.

The trial was a long one, spanning over 40 days and involving a total of nine lawyers. The Plaintiff sought to legalize the third floor and asked for significant damages for her losses.

At trial, the plaintiff was awarded \$300,000 in damages, plus costs to close up and vacate the third floor and the lost renovation costs. The trial judge agreed that the Plaintiff's lawyer was negligent in failing to provide her with the condominium plans which would have shown that the third floor was not part of the townhouse.

The court of appeal however held that the condominium corporation was responsible due to the negligent misstatement in the estoppel certificate (in stating that there were no violations of the condominium declaration). Both the condominium, as well as the law firm, were ruled jointly responsible for the difference in value between the current value of a 2 story unit and a 3 story unit. Further, the court ordered the Plaintiff to retain the unit in its 3 story configuration without amending the condominium declaration. In addition, the plaintiff was awarded damages of approximately \$42,000 against the condominium corporation and of approximately \$28,000 of refund of legal fees by her lawyer.

The big takeaway:

While one may think that when purchasing a property, the seller of that property is under some obligation to disclose defects and/or violations, it is clear from this case, that from all the parties that may be responsible for damages resulting from the failure to disclose, two parties seem to be the most responsible: The Condo Corp and your lawyer.

Condominium corporations will now have to be extremely careful when it comes to the information contained in the status certificate.

And with respect to lawyers, while there is no express rule that lawyers must show their clients the condominium plans, following this case, it is clear that for those lawyers who opt out of this extra precautionary step, the court is not necessarily sympathetic – and the lawyer will be taking such a step at his/her own peril.



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