

**Volume 2011 (5): June*****Wellington Standard Condominium Corporation No. 103 v. Wyndham Place Holdings Inc. (March 28, 2011), Court File No. 642/10 (Ont. S.C.J.) unreported decision***

The residential condominium corporation brought an action to enforce various liens against a number of parking units still owned by the declarant. Once all of the residential units were sold, the declarant stopped paying for the common expenses attributable to the parking units it still owned. Pursuant to section 85 of the *Condominium Act, 1998*, the condominium registered a lien against each parking unit owned by the declarant that was in arrears.

The declarant did not pay to discharge the liens and the condominium issued a statement of claim for foreclosure of the parking units. If successful, a foreclosure action would result in the condominium becoming the owner of the parking units in satisfaction of the outstanding debt. Rather than file a defence, the declarant filed a request for sale to convert the action to a judicial sale proceeding. The result of a judicial sale proceeding would be that the units would be sold to a third party for fair market value and the liens would be discharged from the funds received. Any amount left after the arrears and legal fees were paid would be provided to the declarant.

The condominium successfully brought a motion to convert the action back to a foreclosure action. The court was satisfied that a sale of the units was not appropriate as the value of the parking units was purely speculative. They were likely to have little or no value, and it was unlikely that the value would outweigh the costs that would be incurred to sell the units. There were no interested purchasers for the parking units.

On March 28th, 2011, the condominium was awarded judgment against the declarant. As a result, the condominium is now the owner of the parking units. The condominium is free to transfer or otherwise dispose of the parking units in any way the Board sees fit, so long as it does so in a manner that is consistent with the objects and duties of the condominium.

Bottomline: Where the declarant refuses to contribute toward the common expenses of a unit that it still owns, even a parking unit, there are remedies available to the condominium. One of these remedies is a foreclosure action in the Superior Court of Justice. While power of sale proceedings are the norm, foreclosure actions can be more appropriate in certain circumstances. For instance, if a healthy market does not exist for selling the unit, a power of sale proceeding is likely to be fruitless, or at the very least quite lengthy. This is most often likely to arise with a parking, storage, or other non-traditional unit. In these circumstances, it may be more appropriate to proceed with a foreclosure action. It may also be more appropriate where the value of the unit is unlikely to be sufficient to satisfy the claim of the condominium. This could occur where there are severe construction deficiencies in the building or where a substantial charge-back lien has been registered against the unit.

** This case was argued successfully by SmithValerioté's Condominium Litigation Team*