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Chan v. Toronto Standard Condominium Corp. No. 1834, [2011] O.J. No. 90 (S.C.J.)

The unit brought an application to remove a lien placed on the title to her unit on the grounds that it was improperly registered by the condominium. The lien concerned the cost of repairs that were charged back to the unit owner after a water leak from her unit caused damage to the unit below it. The condominium also brought its own application for an order that the unit owner and tenants residing in the unit comply with the provisions of the *Condominium Act, 1998*, S.O. 1998, c.19; (the “Act”), and the registered declaration and rules with respect to leasing the unit.

The Court held that there was sufficient evidence to infer that the water leaked from the unit and caused damage to the unit below. There had been a previous water leak from the unit and the unit owner was given at least two written notices of the water leak informing her that she would be responsible for the cost of repairs. The condominium’s declaration permitted the condominium to recover the costs of repairs, legal and collection costs and any deductible paid under its insurance policy. The condominium charged the cost of the repairs back to the unit owner including the insurance deductible and replacement costs for various improvements to the unit beyond the standard unit specifications. The Court held the unit owner was given valid notice of the lien and it was registered within the requirements of the Act. The amount claimed complied with the requirements of the declaration and the condominium was entitled to a lien upon default by the unit owner.

As for the condominium’s application, the Court ordered the unit owner to remove all of the locks which were installed without the prior approval of the condominium. The unit owner and tenants were also found to be in breach of section 119 of the Act, the declaration and rules in that the unit was occupied by multiple unrelated tenants and not as a “single family”. The Court confirmed that a “single family” restriction in a declaration is valid.

The Court also confirmed that the blameless unit owners should not be made to bear any of the costs of an offending unit owner. The Court ordered the unit owner to pay the condominium’s costs on a full recovery basis. The unit owner had flagrantly breached the rules and advanced unreasonable and dishonest arguments about her leasing practices. She was ordered to pay \$41,706.00 in costs to the condominium.

Bottom line: Where a condominium’s declaration permits a condominium to charge certain costs, including the condominium’s insurance deductible and repairs to another unit, the condominium is entitled to register a lien on the unit where the unit owner fails to indemnify the condominium for such costs, charges or repairs. In keeping with *Nipissing Condominium Corporation No. 4 v. Kilfoyl, [2010] O.J. No. 1101 (Ont. C.A.)*, the court affirmed that the “single family residence” restriction is valid and enforceable.

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