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York Region Condominium Corporation No. 890 v. RPS Resource Property Services, [2010] ONSC

The commercial condominium hired RPS to manage its day-to-day operations as property manager. In 2005, the condominium terminated RPS after the directors became concerned about the services being provided by RPS. Shortly afterward, the new property manager discovered a cash flow problem and requested various financial documents from RPS, including bank statements and reconciliations. Based on the documents provided, the new property manager discovered that \$370,381.47 had been transferred out of the condominium's account.

The Court held that the property manager was liable to the condominium for breach of the management agreement, conversion and breach of trust. It was a clear violation of section 115(1) of the Condominium Act, 1998, which imposes trust obligations on every person who receives money on behalf of a condominium corporation. The court found that the condominium's account was being used to cover operating losses of the property management company as they planned on depositing the funds into the condominium's account before it was detected at year-end by the auditors. However, the fact that they took the funds with the intention of returning them did not reduce their liability for breach of trust.

The Court also held the owner of the RPS personally liable for breach of trust.

Bottom line: This case confirms the high obligations property managers carry when holding condominium funds. Even borrowing from a condominium is a breach of section 115(1) of the Condominium Act, 1998.

**Swan v. Goan, [2010] O.J. No. 5072 (Small Claims Court)**

The actions arose as a result of a requisition meeting requested by one of the directors to remove the plaintiff, also a director, from the board. The plaintiff was elected to the board of directors by the unit owners. Shortly after his election, he began to create problems. He began to operate the condominium without the input of the other directors, including his unilaterally calling board meetings, attempting to terminate the property manager, and initiating claims against the condominium. One of the directors sought the advice of a lawyer on the proper procedure to remove a director from the board. The lawyer drafted a Requisition for Meeting pursuant to section 46 of the *Condominium Act, 1998*. This escalated the conduct of the plaintiff. He then brought five actions for defamation and libel: one against the condominium; two against the director that requisitioned the meeting; one against the property managers; and one against another director.

The Court dismissed all of the actions. The action against the property manager was dismissed since she was duty bound to reproduce the requisition notice in her capacity as property manager. In addition, any defamatory statements made by the directors or property manager were true in both substance and fact. As such, they were entitled to rely upon the defences of fair comment and qualified privilege. Finally, since the director prepared the requisition notice in her capacity as a unit owner, not as a director, the Corporation could not be liable for her actions.

Bottom line: A director or property manager will not be liable for defamation when preparing a notice of meeting in response to a requisition as he or she is statutorily required to prepare the notice pursuant to the *Condominium Act, 1998*.

