



Fischer & Company

Law Corporation

#202 – 1447 ELLIS STREET KELOWNA, B.C. V1Y 2A3
TELEPHONE: 250-712-0066 FAX: 250-712-0061

www.fischerandcompany.ca

BC STRATA AND CONDOMINIUM LAW NEWSLETTER

October 2017

URGENT STRATA LIEN UPDATE

Today we received the decision of the B.C. Court of Appeal with respect to the proper interpretation of section 118 of the *Strata Property Act*. A three Justice panel of the B.C. Court of Appeal unanimously agreed with our submissions as to the correct interpretation of section 118 of the *Strata Property Act*.

The *Strata Property Act* allows any strata corporation to take decisive steps to secure payment of unpaid strata fees, special levies and other specified charges from delinquent owners, including registering a lien, enforcing a lien and proceeding to Court to achieve the sale of that strata lot to satisfy valid arrears. Today's decision from the B.C. Court of Appeal dictates that an owner who has failed to pay those valid charges will be responsible for the actual full legal expenses of the strata corporation – as long as the legal expenses are reasonably incurred.

The actual legal expenses reasonably incurred by the strata corporation to take those steps now also take priority over the amount recoverable by a mortgage lender. That detail may provide mortgagees with incentive to file a Form C 'Mortgagee's Request for Notification' so that they get early notice of arrears. Mortgagees will also have to consider how their actions might increase a strata corporation's legal expenses, and whether they should avoid unnecessarily increasing those expenses.

Perhaps most importantly, the decision should make it easier to persuade owners and mortgage lenders to keep strata fees up to date.

This decision also solves a problem which was being faced by many smaller strata corporations. Arrears were often expiring due to the 2 year limitation period before they reached an amount which was practical to collect with a lawyer's assistance. That is no longer the case, as long as the Strata Corporation directs its lawyer to take reasonable steps, and the legal expenses are reasonable under the circumstances.

We will be revising our templates and collections engagement letters presently, and applying the resulting changes in our daily approach to collections files currently in process. If your strata corporation needs assistance with collection of unpaid assessments, we would be very pleased to assist and can now provide better options based on this result. We can provide interested strata corporations with a collections package outlining our process, on request.

The test of "reasonableness" is important – so part of our approach to collections files includes analysis and determination of the best approach, and any steps which can be taken to improve efficiency and increase the prospects of full recovery of legal expenses.

Today's B.C. Court of Appeal Ruling also corrected an error by the lower court with respect to the effect of filing a lien. The three justices of the Court of Appeal agreed with our view that a lien does not stop the limitation clock from running, and it remains necessary to commence a proceeding before the two year limitation period has expired.

The case was reported on the BC Courts website this morning:

<http://www.courts.gov.bc.ca/jdb-txt/ca/17/03/2017BCCA0377.htm>

The Decision overturns the recent trend in B.C. Supreme Court decisions in Milligan, Baettig and other cases which had previously ruled that only ordinary "Court Costs" should be recoverable. The Judges in those prior cases had tried to fairly balance the interests of strata corporations, owners and mortgagees - however in our view the result wasn't fair to innocent owners who would have born a share of expenses related to bringing delinquent owners current in their assessments. The B.C. Court of Appeal has now corrected that imbalance.

The Impact of Success

This decision represents our firm's second successful result from the B.C. Court of Appeal in the last 12 months on very important issues applicable to all strata corporations. We are

mindful that one cannot expect any particular result from any court proceeding, and that there is no entitlement to success. However we take great pride in the results we have achieved during Fischer and Company's 10th year in Kelowna.

Court of Appeal submissions represent far more time and sacrifice than is reflected in a lawyer's bill – it is very gratifying to have that time and emotional investment manifest a positive result for our client and for the industry as a whole.

Thank you for your continued support.

Fischer & Company

Fischer & Company, located in the heart of the Okanagan, Kelowna, has provided a wide range of legal services to individuals, strata corporations and management companies in Kelowna, the Okanagan, and throughout the entire Province of British Columbia, since 2007. For more information on our Services Offered, to review our online Strata Basic Tips or New updates, or to see how we can assist you with your issue, please visit our website at www.fischerandcompany.ca

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