

Court of Appeal Confirms Deadline for Registering Condominium Liens

In a recent decision by the Ontario Court of Appeal ([CIBC Mortgages Inc. v. YCC No. 385](#)), the Court confirmed the deadline by which a condominium corporation can validly register a lien pursuant to section 85 of the Condominium Act, 1998 (the “Act”).

Section 85 provides that if an owner defaults in the payment of common expenses, then the condominium corporation has a lien against the owner’s unit. The lien expires *three months after the default that gave rise to the lien occurred*, unless the corporation has registered on title a certificate of lien. A properly registered lien has priority over any mortgage registered against the unit as long as the mortgagee gets written notice of the lien.

In this case, on February 14, 2011 the corporation obtained a compliance order restraining an owner from harassing the corporation’s staff and other residents. With the compliance order, the court also awarded the corporation costs in the amount of \$15,000, payable within 30 days of the order. The unit owner failed to pay the costs within the 30-day time period. On August 14, 2011, the corporation sent the owner a demand letter requiring payment of the costs award (plus additional actual costs incurred after the order had been rendered) by no later than September 14, 2011. A certificate of lien was then registered on December 12, 2011, approximately 10 months after the date of the costs award. The required notice of the lien was given to the Bank holding a mortgage on the unit.

Ultimately the corporation sold the unit for \$110,000. By that time, the amount of the corporation’s lien had increased to \$113,616. The unit owner also defaulted under the mortgage, owing \$135,411 to the Bank. The Bank claimed that its mortgage had priority over the lien since the corporation’s lien was invalid, as it was not registered within the requisite time period.

The question that the Court of Appeal had to decide was when did the default occur?

The Court took a common sense/plain meaning approach and determined that the default occurred on March 17, 2011 when the owner did not make payment by March 16, 2011, the payment date specified in the compliance order. This meant that the corporation’s lien rights had already expired when the lien was registered in December.

Although section 134(5) of the Act gives the corporation the right to add the costs of obtaining a compliance order to the common expenses for the unit and also provides that the corporation may specify a time for payment of such costs, the Court rejected the corporation’s claim that the default occurred on September 14, 2011, the date specified in its demand letter. The Court concluded that Section 134(5) did not give the corporation any right to extend the time period to register its lien after the default in payment has already occurred. It only gave the corporation the discretion to defer the payment to a date specified by the corporation. The Court of Appeal decision affirmed the earlier decision by the Superior Court of Justice.

The Court of Appeal noted that the registration of the lien “fell between the cracks” and that the delay in registration and the “ballooning costs” from \$15,000 to \$113,616 arose from the corporation’s internal matters. A court-appointed administrator had fired both the corporation’s

property manager and the law firm that had carriage of the compliance proceedings in March of 2011.

The result in this case is unfortunate for all of the corporation's unit owners, as the costs relating to the compliance order will be added to the corporation's common expenses and they will be footing the bill for this. The provisions of section 85 and 134(5) are powerful remedies provided to condominium corporations, as they provide a mechanism to protect non-defaulting owners from the financial consequences that arise when a non-compliant owner defaults in the payment of common expenses. However, this case stresses that in order to get the benefit of these provisions they must be strictly complied with. Liens that are not registered within the requisite time period will expire to the detriment of the other owners in the condominium.