

Status Certificate Errors

[In a recent case](#), a condominium management firm was held responsible to pay a condominium corporation for financial losses incurred as a result of an error in a status certificate issued by the manager.

The condominium corporation was in the process of making arrangements to have the condominium roof replaced. At about the same time, a portion of the condominium common elements was being expropriated by the Toronto Transit Commission (the “TTC”). In order to fund the roof replacement, the board levied a special assessment in the amount of \$745,232. This was equal to the amount of the expropriation payment received from the TTC, which was deposited into the corporation’s reserve fund.

Prior to the special assessment being levied, a status certificate was delivered to the prospective purchaser of unit 13. The purchase transaction was conditional on the purchaser receiving and approving the status certificate. The status certificate did not disclose that the roof needed to be replaced or the anticipated costs of the roof replacement. There was also no mention of the TTC expropriation and how the expropriation funds were to be used. After receiving the status certificate, the purchaser closed the transaction.

After the special assessment was levied, the unit 13 purchaser sued the corporation claiming that the special assessment did not apply to the purchaser’s unit and that the purchaser was entitled to receive its proportionate share of the TTC expropriation proceeds. In that lawsuit the Divisional Court concluded that as the status certificate “did not make full and complete disclosure of the state of the condominium corporation’s finances” and did not comply with the requirements of the Condominium Act, 1998, the unit 13 purchaser was not required to pay the special assessment for the roof replacement. However, the Divisional Court did not order that the unit 13 purchaser was entitled to be paid any share of the expropriation proceeds. So this was a pyrrhic victory for the unit 13 purchaser. While this resulted in a “wash” in that neither party was required to make a payment to the other, the unit 13 purchaser was awarded costs in the amount of \$15,000.

The condominium corporation then sued the manager for \$97,182, being the out-of-pocket costs it incurred in the lawsuit with the unit 13 purchaser (\$15,000 in costs it had to pay to the unit 13 purchaser, plus the legal fees and expenses it incurred in the lawsuit), plus pre-judgment interest. The corporation based its claim on the condominium Management Agreement which provided that “the Manager is responsible for the accuracy and completeness of all information in the status certificate and shall be liable for any costs incurred as a result of any errors by the Manager in its preparation”, and that the manager would indemnify the corporation for any damages caused as a result of the negligence of the manager.

As the status certificate that was delivered to the unit purchaser did not refer to the anticipated roof repairs and the TTC expropriation, [the Court determined](#) that the manager had breached the Condominium Management Agreement and ordered the manager to pay the corporation the full amount of the damages that it claimed plus pre-judgment interest. In addition, the manager was ordered to pay the corporation costs in the amount of \$42,000. It may be that the manager

determined that there was no need to mention the roof repairs as the anticipated cost of those repairs was to be offset by the amount of the TTC expropriation payment, resulting in a “wash” for the unit owners.

This case illustrates that if there is an error or omission in the status certificate, this will have negative ramifications for all parties and there is no “winner”. There are several lessons to be learned from this case:

- As the contents of the status certificate can be crucial to a purchaser in making a decision as to whether to proceed with the purchase of a condominium unit, managers must constantly be reviewing and updating the information in the status certificate to ensure that it is complete and accurate at the time that it is issued.
- The Board of Directors must communicate to the manager any information that it has which should be included in the status certificate. If the Board does not provide any such pertinent information to the manager, which results in an error/omission in the status certificate, then the condominium corporation (and ultimately all of the unit owners) will be responsible for the mistake.
- If there is an error or omission in the status certificate due to a clear mistake by the manager, the manager should take responsibility for the mistake.