

Court of King's Bench of Alberta

Citation: Condominium Corporation No 0426972 v 1124209 Alberta Ltd, 2026 ABKB 600

Date: 20260828
Docket: 2403 10686
Registry: Edmonton

Between:

Condominium Corporation No. 0426972

Applicant

- and -

1124209 Alberta Ltd

Respondent

Memorandum of Decision of Applications Judge B.W. Summers

Introduction

[1] This Memorandum of Decision addresses whether a commercial condominium corporation may require a unit owner to remove a sign located on common property of the condominium. The sign advertises the law office of the unit owner's tenant and has been there for over 20 years.

[2] In oral argument, counsel for the condominium corporation respectfully requested a written decision, as he thought that it would be helpful to the profession with respect to this aspect of condominium law.

Facts

[3] The Applicant is the condominium corporation that operates the Strathcona Square commercial condominium in south Edmonton. The Respondent is the owner of a unit ("Unit") and rents it to a related entity called Bhalla Law.

[4] The condominium corporation was registered on December 17, 2004. The Respondent purchased the Unit from the developer of the commercial condominium in 2005 although title

was not registered in the Respondent's name until February of 2006. Bhalla Law has been in continuous occupation of the Unit since November of 2005.

[5] The purchase contract ("Purchase Contract") between the developer and the Respondent included the following handwritten notation under the heading "Additional Terms":

The Purchaser shall have full ownership of the exterior sign fronting 34 Ave (the "Sign"). The Purchaser shall be solely responsible for all costs associated with repair, maintenance, and upkeep of the Sign. The Condominium Board or any other governing Body/Entity shall not impose any fees, levies, or charges related to the Sign.

(the "Purchase Contract Sign Agreement")

[6] The condominium corporation issued an Estoppel Certificate when the Respondent purchased the Unit.

[7] In 2020 the Applicant elected a new board. The new board hired a new property manager, Group Three Property Management Inc ("Group Three"). Group Three undertook a review and organization of the Applicant's records. It was during the course of this review that Group Three discovered that the Sign was located on common property.

[8] On July 14, 2022 counsel for the Applicant wrote to the Respondent demanding removal of the Sign. The Respondent refused, asserting that when it purchased the Unit the transaction included a lease agreement granting it exclusive use of the Sign on the common property.

[9] The Applicant offered to allow the Respondent to post a sign on the Strathcona Square pylon, at no charge, but the Respondent refused this offer.

[10] The Respondent offered to share the sign on a 50/50 basis with the condominium corporation or accept a grandfathering of authorization for the Sign until the Respondent sold the Unit. The Applicant did not accept either of these proposals.

[11] The Applicant commenced this action against the Respondent by Originating Application on May 31, 2024. The Applicant asserted that the Respondent is guilty of improper conduct for failing to remove the Sign from the common property and sought an order for its removal.

[12] The Respondent filed an affidavit disclosing the Purchase Contract Sign Agreement.

[13] The Applicant amended its Originating Application to assert that the Purchase Contract Sign Agreement between the developer and the Respondent did not comply with the *Condominium Property Act* ("CPA"), or its regulations with respect to the sale or lease of the Sign on common property. The relief sought within the Amended Originating Application included the following:

- (a) A declaration that the Respondent is guilty of improper conduct under s 67 of the CPA;
- (b) An order directing the Respondent to remove the Sign;
- (c) An order transferring ownership of the Sign to the Applicant; and

- (d) An order setting aside the lease or sale agreement between the developer and the Respondent.

[14] The Applicant did not name the developer as a respondent to this action as the developer was struck as a corporation in 2009.

[15] The parties have filed affidavits, transcripts of cross examination on affidavits and answers to undertakings.

[16] The Respondent filed both a Statement of Defense and a cross application to dismiss the Applicant's application on the basis that the claim was barred under the *Limitations Act* and barred by the equitable doctrines of laches and estoppel.

Issues

[17] The ultimate issue is whether the Respondent is guilty of improper conduct under s 67 of the *CPA* for failing to remove the Sign. This issue requires the Court to consider the following underlying issues:

- (a) Is the Purchase Contract Sign Agreement void as being *ultra vires* the condominium corporation?
- (b) If the Purchase Contract Sign Agreement is *ultra vires*, is the Applicant limitation barred from seeking a remedy?
- (c) Is the remedy sought by the Applicant a recovery of real property within the meaning of s 3.2 of the *Limitations Act* (which effectively states that there is no limitation period for the recovery of real property)?
- (d) Do the equitable doctrines of laches or estoppel disentitle the Applicant to the relief sought?

Discussion of the Issues

Is the Purchase Contract Sign Agreement void as being *ultra vires*?

[18] The Applicant argues that there are only two statutory bases upon which the Respondent may have received a lawful right of use or ownership of the Sign on common property of the condominium corporation.

[19] The first basis is under s 49 of the *CPA*, as follows:

Disposition of common property

49(1) By a special resolution a corporation may be directed to transfer or lease the real property of the corporation or the common property, or any part of it.

(2) When the board is satisfied that the special resolution was properly passed and the requirements of the regulations have been complied with, the corporation shall execute the appropriate transfer or lease.

(3) A transfer or lease executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the common

property, and the receipt of the corporation for the purchase money, rent, premiums or other money payable to the corporation under the terms of the transfer or lease is a sufficient discharge of and exonerates the persons taking under the transfer or the lease from any responsibility for the application of the money expressed to have been so received.

(4) The Registrar shall not register a transfer or lease authorized under this section unless it has endorsed on it or is accompanied with a certificate under the seal of the corporation stating

- (a) that the special resolution was properly passed,
- (b) that the transfer or lease conforms with the terms of it, and
- (c) that the requirements of the regulations have been complied with.

(5) The certificate referred to in subsection (4) is,

- (a) in favour of a purchaser or lessee of the common property, or part of it, and
- (b) in favour of the Registrar,

conclusive proof of the facts stated in the certificate.

(6) On the filing for registration of a transfer of common property, the Registrar

- (a) shall, before issuing a certificate of title, amend the condominium plan by deleting from it the common property comprised in the transfer, and
- (b) shall register the transfer by issuing to the transferee a certificate of title for the land transferred, but no notification of the transfer shall be made on any other certificate of title in the register.

(7) On the filing for registration of a lease of common property, the Registrar shall register the lease by noting it on the condominium plan in the manner prescribed by the regulations.

[20] There is no evidence that any of the requirements for the transfer or lease of the common property of the condominium corporation under s 49 of the *CPA* was met.

[21] The second basis is under s 50 of the *CPA*, as follows:

Exclusive use areas

50(1) Notwithstanding sections 37(3) and 49, a corporation may, by means of a bylaw, lease, licence or other instrument, grant an owner the right to exercise exclusive possession in respect of an area of the real property of the corporation or the common property.

(2) A grant of the right to exercise exclusive possession may be withdrawn according to the terms of the bylaw, lease, licence or other instrument referred to in subsection (1).

(3) Where the corporation grants a right to exercise exclusive possession under subsection (1), the corporation may require the owner, under the bylaw, lease, licence or other instrument, to maintain and repair the area of the real property of the corporation or the common property that is the subject of the grant.

(4) Despite subsection (3), where an owner fails to maintain or repair the area of the real property of the corporation or common property in compliance with the requirements under subsection (3), the corporation may carry out the necessary maintenance or repairs.

(5) A corporation may recover from an owner by an action in debt any reasonable costs it has incurred

(a) for the purposes of maintenance or repairs under subsection (4),

(b) pursuant to the regulations, or

(c) as required by a municipal authority or other public authority

in respect of the area of the real property of the corporation or the common property that is the subject of a grant to the owner of the right to exercise exclusive possession under subsection (1).

[22] The Purchase Contract Sign Agreement may be an instrument under which the Respondent acquired the right to exercise exclusive possession of the common property with respect to the Sign.

[23] However, s 8(1) of the *CPA* provides in part:

8(1) Every plan presented for registration as a condominium plan shall

...

(i) where in accordance with section 50 an owner may be permitted to exercise exclusive possession in respect of an area or areas of common property, delineate to the satisfaction of the Registrar the boundaries of the area of common property over which the owner may be permitted to exercise exclusive possession...

[24] In this case before me, the condominium plan does not delineate an area of the common property pursuant to which the Respondent is entitled to exercise exclusive possession of the common property with respect to the Sign.

[25] Counsel for the Applicant refers to the following two cases where the Courts have found that agreements for exclusive use of common property parking stalls were *ultra vires* the condominium corporation for failing to meet the statutory requirements of the *CPA*:

Condominium Plan No 992 5205 v Carrington Developments Ltd, 2004 ABCA 243 (“*Carrington*”) and **Lightner v Owners: Condominium Plan No. 772 3097**, 2009 ABQB 3 (“*Lightner*”).

[26] In *Carrington*, while the developer of the condominium corporation controlled the board, it received the right to the exclusive use of parking stalls on the common property for 101 years. The Court of Appeal found that the lengthy exclusive use agreements were tantamount to leases

and struck the agreements as *ultra vires* the condominium corporation as the agreements did not meet the requirements of the predecessors to either ss 49 or 50 of the CPA.

[27] **Lightner** followed **Carrington** ruling that because the exclusive use parking areas were not delineated on the condominium plan the agreement was *ultra vires*. The Court also found that an estoppel certificate could not otherwise validate or cure an *ultra vires* act.

[28] Critical to both cases is the underlying principle of law that because condominium corporations are purely creatures of statute, that is the CPA, they only have authority to do what the CPA authorizes them to do.

[29] The Respondent here does not argue that the Purchase Contract Sign Agreement was *intra vires* the condominium corporation, but rather made the following two arguments: firstly, that as the Applicant had not argued in its original application that the Respondent had gained the Sign through an *ultra vires* agreement made by the condominium corporation it would be inappropriate for the Applicant to raise new arguments related to a different and broader s 67 oppression application; and secondly, the Applicant is not entitled to relief because it is limitation barred.

[30] As for the first complaint, apparently when the Applicant first filed its application, it was not aware of the Purchase Contract Sign Agreement, as it was produced by the Respondent later. The amendment to the Originating Application was obviously a response to the evidence provided by the Respondent. Furthermore, if the Respondent felt a need to put forward further evidence as a result of the amendment to the Originating Application, it should have asked to do so. In any event, there has been no indication that the Respondent has missed an opportunity to put in further evidence. I dismiss this first argument on behalf of the Respondent.

Is the Applicant's claim limitation barred?

[31] The Respondent notes that the Sign has been in place since 2005, and that the ultimate limitation period of 10 years has long since expired.

[32] The Applicant has three arguments as to why its claim is not limitation barred: firstly, that an *ultra vires* act can never be made valid by the passage of a limitation period; secondly, as the Sign being on the common property of the condominium corporation without authorization is continual, there is ongoing "improper conduct" under s 67 of the CPA that is not limitation barred; and thirdly, because the effect of this remedy is to recover real property, there is no limitation pursuant to s 3.2 of the *Limitations Act*.

[33] I will deal with the first and second arguments together as I think that they really bring about the same consideration.

[34] I agree with the Applicant that an *ultra vires* act of a condominium corporation cannot become *intra vires* simply through the passage of a limitation period. That is so because the condominium corporation is a creature of statute—the CPA. If the Purchase Contract Sign Agreement did not lawfully transfer or lease or grant exclusive use of its common property to the Respondent in 2005, that is still the case.

[35] The Respondent has not provided any authority that suggests that an *ultra vires* act may become lawfully enforceable upon the passage of a limitation period. Nor have I been able to locate any such authority.

[36] In its Amended Originating Application, the Applicant sought an order setting aside the Purchase Contract Sign Agreement. In my view, that is not necessary. If the transfer or lease or grant of exclusive use of common property of the condominium corporation under the Purchase Contract Sign Agreement was and is *ultra vires*, why does it have to be set aside? In my view, it does not need to be set aside.

[37] The Respondent is attempting to use the Purchase Contract Sign Agreement as a basis to prevent the Applicant from enforcing control over the condominium corporation's common property. Since it is *ultra vires*, the Purchase Contract Sign Agreement is unable to accomplish this.

[38] In seeking to have the Sign removed from its common property, the Applicant is seeking to fulfill its statutory duties applicable today. The Applicant demanded that the Sign be removed in 2022. The Applicant commenced this action within two years of that demand. The application to have the Sign removed is not limitation barred.

Is the Applicant's remedy one seeking recovery of real property?

[39] Given the conclusion that I have drawn to this point in time, it is not necessary for me to determine if the remedy sought by the Applicant is a recovery of real property. However, since I specifically asked counsel to address this issue, I will provide the following comments, which will be useful in a later part of this decision.

[40] The relevant provision of the *Limitations Act* is as follows:

3.2(1) Notwithstanding any provision of this Act,

- (a) there is no limitation period in respect of a claim for recovery of possession of real property, including for an order under section 69 of the *Law of Property Act*, and
- (b) a defendant does not have a defence based on adverse possession.

[41] The Respondent argued that removal of the Sign is not the recovery of real property because it is not a fixture. I am advised that the Sign is affixed to wooden posts that are not cemented into the ground. However, there is no evidence on the actual degree of annexation.

[42] I asked for case law from both parties on whether the Sign is or is not a fixture. I find that the following passage from the dissenting judgment of Carrothers, JA in the case of ***Diamond Neon (Manufacturing) Ltd v Toronto Dominion Realty Co*** 1976 CarswellBC 198, [1976] 4 W.W.R. 664 to be extremely helpful in this case:

12 It seems to me that a sign, by its very wording, has a unique ability to speak for itself on the matter of the intention or purpose of the tenant and the owner of the real property in question as to whether that sign was intended to become part of the land or intended to continue as a chattel. To use the phraseology of Meredith C.J. cited with approval by McFarlane J.A. in ***La Salle Recreations Ltd. v. Can. Camdex Investments Ltd.*** (1969), 68 W.W.R. 339, 4 D.L.R. (3d) 549 (B.C.C.A.), to my mind the wording of a sign is capable of constituting circumstances [p. 344] "to shew that they [articles affixed to the land] were intended to continue chattels" and to [p. 344] "shew the degree of annexation and object of such annexation, which are patent to all to see".

13 I draw the analogy of two identically fabricated (though not objects of art) brass plates securely fastened with the same degree of affixation to either side of an entrance doorway, with no contractual or declaratory evidence of ownership. One plate bears the civic address of the premises, being permanent information relative to the land, enhancing the value of the premises and improving its usefulness for any and all purposes for which it might be used. The other plate bears the name, professional qualifications and office hours of, say, a doctor, lawyer, or chartered accountant occupying the premises as a tenant for the purposes of carrying on his profession, being information relative to the particular occupation of the particular occupant and being as transitory as his tenancy. Applying the established principles of law, I would think that a purchaser of the premises would be entitled to assume that the address plate was intended to be a fixture forming part of the realty but suggest that, in the absence of evidence of abandonment, the name plate was intended to remain a chattel belonging personally to the tenant.

[43] Based upon this very logical authority, I find that the Sign is a chattel and not a fixture. Consequently, s 3.2 of the *Limitations Act* has no operation.

Do the equitable doctrines of laches or estoppel prevent the Applicant from receiving a remedy?

Laches

[44] Although the Respondent pled the defense of laches in its Statement of Defense, it was not argued at the hearing nor in the Respondent's brief.

[45] Counsel for the Applicant points out that laches is not just concerned with delay. In the case of **681210 Alberta Ltd v Hunter**, 2012 ABCA 83 the Court of Appeal stated the following:

The Supreme Court of Canada discussed laches in **M (K) v M (H)**, 1992 CanLII 31 (SCC), [1992] 3 SCR 6, 96 DLR (4th) 289. Speaking for the court, LaForest J. noted, at 77-78:

A good discussion of the rule and of laches in general is found in Meagher, Gummow and Lehane, *supra*, at pp. 755-765, where the authors distill the doctrine in this manner, at p. 755:

It is a defence which requires that a defendant can successfully resist an equitable (although not a legal) claim made against him if he can demonstrate that the plaintiff, by delaying the institution or prosecution of his case, has either (a) acquiesced in the defendant's conduct or (b) caused the defendant to alter his position in reasonable reliance on the plaintiff's acceptance of the status quo, or otherwise permitted a situation to arise which it would be unjust to disturb.

Thus there are two distinct branches of the laches doctrine, and either will suffice as a defence to a claim in equity. What is

immediately obvious from all of the authorities is that mere delay is insufficient to trigger laches under either of its two branches.

[46] The Respondent cannot say that it altered its position relying on the status quo, or that the Applicant knowingly acquiesced in the Respondent's conduct. In any event, the Applicant's claim is a legal claim, not an equitable claim.

Estoppel

[47] The Respondent submits that the estoppel certificate issued to it in 2005 ("2005 Estoppel Certificate") is conclusive proof of compliance and prevents the Applicant from asserting a claim, right or fact that contradicts its own property management company's actions and representations in 2005 that the Respondent's Unit and signage were compliant. The Respondent further states that if the Unit or signage were not compliant, that needed to be communicated in the 2005 Estoppel Certificate pursuant to s 43.2(e) of the *CPA*. The entire section states:

43.2(1) On the written request of an owner, purchaser or mortgagee or the solicitor of an owner, purchaser or mortgagee, or a person authorized in writing by an owner, purchaser or mortgagee, the corporation shall, within 10 days after receiving the request, provide a certificate certifying all of the following in respect of all units owned by that owner:

- (a) the amount of any contribution payable by the owner;
- (b) the frequency at which contributions are payable;
- (c) the amount of contributions payable that is in arrears, if any;
- (d) the amount of interest owing, if any, on any unpaid balance of a contribution; and
- (e) any other information required by the regulations.

(2) A certificate provided under subsection (1) is conclusive proof of the matters certified in it in favour of the person requesting the certificate in respect of the relevant unit or units as of the date of the certificate.

[48] This particular section of the *CPA* did not come into force until 2014 and therefore has no application to the 2005 Estoppel Certificate.

[49] The section in the *CPA* in force between January 1, 2005 and December 31, 2006 ("*2005 CPA*") that may have some application is as follows:

44 On the written request of an owner, purchaser or mortgagee of a unit the corporation shall, within 10 days after receiving that request, provide to the person making the request one or more of the following as requested by that person:

- (a) a statement setting out the amount of any contributions due and payable in respect of a unit;
- (b) the particulars of
 - (i) any action commenced against the corporation and served on the corporation,

- (ii) any unsatisfied judgment or order for which the corporation is liable, and
- (iii) any written demand made on the corporation for an amount in excess of \$5000 that, if not met, may result in an action being brought against the corporation;
- (c) the particulars of or a copy of any subsisting management agreement;
- (d) the particulars of or a copy of any subsisting recreational agreement;
- (e) the particulars of any post tensioned cables that are located anywhere on or within the property that is included in the condominium plan;
- (f) a copy of the budget of the corporation;
- (g) a copy of the most recent financial statements, if any, of the corporation;
- (h) a copy of the bylaws of the corporation;
- (i) a copy of any minutes of proceedings of a general meeting of the corporation or of the board;
- (j) a statement setting out the amount of the capital replacement reserve fund;
- (k) a statement setting out the amount of the monthly contributions and the basis on which that amount was determined;
- (l) a statement setting out the unit factors and the criteria used to determine unit factor allocation;
- (m) a statement setting out any structural deficiencies that the corporation has knowledge of at the time of the request in any of the buildings that are included in the condominium plan;
- (n) a copy of any lease agreement or exclusive use agreement with respect to the possession of a portion of the common property, including a parking stall or storage unit.

[50] The 2005 Estoppel Certificate had information meeting the requirements of paragraphs (a) and (b) of s 44 of the 2005 CPA. The 2005 Estoppel Certificate made no representation that the Unit or the Sign were compliant.

[51] In *Lightner*, the Plaintiff unit owner claiming entitlement to an impugned parking stall which had been transferred under an *ultra vires* agreement, also argued that he had relied on an estoppel certificate with respect to the parking stall. In that case the court found that there had been no reliance on the estoppel certificate with respect to the parking stall.

[52] The equitable defense of estoppel has not been made out. Even if it had been made out, I would also conclude that it cannot convert an *ultra vires* act of a condominium corporation into an *intra vires* act. As stated earlier, this is an ongoing complaint of improper conduct.

Improper conduct

[53] The Applicant states that the Sign being located on the condominium corporation's common property without proper authorization is improper conduct on the part of the Respondent contrary to s 67 of the *CPA*. That section states, among other things that improper conduct includes non-compliance with the *CPA* by an owner. The failure of the Respondent to remove the Sign from the common property is a failure to comply with the *CPA*. This is improper conduct.

Order of the Court

[54] I order that the Respondent remove the Sign from the common property within thirty days of this Memorandum of Decision. Since I have found that it is a chattel, the Sign belongs to the Respondent.

[55] If costs cannot be agreed to an application may be made before me in morning chambers within thirty days of the date of this Memorandum of Decision.

Heard on the 24th day of June, 2026.

Dated at the City of Edmonton, Alberta this 28th day of August, 2026.

B.W. Summers
A.J.C.K.B.A.

Appearances:

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