

Condominium breached duty to disclose imminent special assessment in status certificate

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Prospective buyers of a condominium unit in Ontario have the right to obtain a status certificate that is supposed to provide them with essential information about the physical and financial situation of the condominium, including any outstanding or expected claims or liabilities, major projects, or costs. The purpose of a status certificate is to bring to the buyer's attention matters which may be of concern when contemplating the purchase of a unit, including future costs for major repairs to the condominium building.

In *Bruce v Waterloo North Condominium Corporation No. 26*, 2023 ONSC 2995 (CanLII), the Ontario Superior Court of Justice addressed whether a condominium corporation had failed to disclose required information to a prospective buyer in a status certificate and the consequences of such non-disclosure.

The buyer purchased the condominium unit in June 2021, in a heated real estate market, with most properties selling within days of being listed for over asking price and without conditions. The buyer and his real estate agent visited the unit on the day set for offers. The buyer instructed his realtor to obtain a status certificate, which was received on the same day.

The status certificate stated that the condominium corporation “has no knowledge of any circumstance that may result in an increase in the common expenses,” except that the monthly common element fees may be increased in accordance with the new budget after the fiscal year end of 31 August 2021.

The buyer's agent reviewed the status certificate and advised that there was nothing to suggest there would be any special assessments anytime soon. Relying on the status certificate, the buyer entered into a binding agreement to purchase the unit. He did not retain a lawyer to review the status certificate, and he did not read all the information in the status certificate.

In May 2022, the buyer learned that the condominium was seeking authorization from the owners to borrow up to \$2.5 million to repair or replace its water main supply and lift station. His expected share was expected to be around \$34,000, which would be payable either up-front as part of a special assessment or as part of a loan.

The buyer subsequently brought an application for a declaration under section 76(6) of the Ontario *Condominium Act, 1998*, which provides as follows:

The status certificate binds the corporation, as of the date it is given or deemed to have been given, with respect to the information that it contains or is deemed to contain, as against a purchaser or mortgagee of a unit who relies on the certificate

Based on this provision, the buyer argued that his unit was exempt from any special assessment, levy, loan or obligation to contribute towards the cost to maintain, repair or replace any asset or property not disclosed in the status certificate, including the water main and the lift station.

The evidence was that since at least 2017, the condominium had been experiencing serious issues with its water main and lift stations. The issues had been discussed at several condo board meetings and in 2019, the condominium obtained a quote for \$415,275 for partial replacement work and retained a consultant for the project. In November 2020, the condominium's auditor flagged that the cost of the project was “estimated to be significant”. The auditor further noted that there was a possibility of a special assessment to the unit owners and/or an application for a loan. In January 2021, these audited financial statements were

presented to the ownership at the annual general meeting.

In the application judge's view, the condominium corporation therefore knew since at least 2017 that its water main and lift station would require costly replacement. Yet, on 8 June 2021, its representative issued a status certificate that asserted that it had no knowledge of any circumstance that may result in an increase in the common expenses. This statement was clearly inaccurate.

A condominium corporation has an obligation to take reasonable steps to ensure that the content of the status certificate is accurate: *Orr v. Metropolitan Toronto Condominium Corporation No. 1056*, 2014 ONCA 855 (CanLII), at para 55.

The respondent condominium corporation argued that the status certificate contained all material information. Although the status certificate did not expressly refer to the prospective special assessment, a report from its auditor was attached, which included the following statement:

The Corporation has tendered the water main repairs. It was unknown at the time of the audit the cost of this project, but it is estimated to be significant. The work is expected to commence and be completed in the following fiscal year. To fund this project, there is a possibility of a special assessment to the unit owners and/or an application for a loan.

The court found that this inadequately disclosed the existence of the project and the likelihood of a special assessment in the 8 June 2021 status certificate. The application judge explained that a status certificate is an overview for a prospective purchaser and should “flag in clear language” any financial concerns that should prompt a prospective purchaser to dig deeper into the “fine print” of all of the attachments. The reference to the project in the auditor's report did not accord with the consumer protection purpose of the *Condominium Act, 1998*, which requires fulsome not minimalist disclosure. The buyer was entitled to rely on the clear and unequivocal statement in the status certificate that the corporation “has no knowledge of any circumstance that may result in an increase in the common expenses for the unit”.

Pursuant to s. 76(6) of the *Condominium Act, 1998*, a status certificate binds the corporation as of the date it is given, and with respect to the information it contains, as against a buyer who relies on the certificate. Therefore, the corporation was prohibited from claiming against the buyer payment for an expenditure that the corporation was negligent in failing to disclose in the status certificate.

The court also concluded that the conduct of the condominium towards the buyer was oppressive and unfairly prejudicial to him, and disregarded his interests under section 135 of the *Condominium Act, 1998*. Section 135 provides a broad remedial jurisdiction to the court to rectify any oppressive or unfairly prejudicial conduct of a condominium corporation towards a unit owner.

In the result, the court exempted the buyer's unit from any special assessment, levy, loan or obligation to contribute towards the costs to maintain, repair or replace any asset or property not adequately disclosed in the status certificate, including the water main and lift station, for so long as he owned the unit. The exemption would, however, cease to apply to any potential future purchaser of the unit, who would be subject to a pro-rated portion of the special assessment, or the remaining portion of the 25-year loan period, at their choice.

The case affirms that a status certificate should always be carefully reviewed in detail, including all attachments. The buyer is fortunate that the court found that he was not required to have reviewed the entirety of the status certificate including the attached documents and auditor's report, even though it was attached and available. In the specific circumstances of the case, the court did not accept that the buyer's failure to do so made him the author of his own misfortune. A PDF version is available to download [here](#).

For more information please contact: **James Cook** at **416.865.6628** or jcook@grllp.com

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Author



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com