

Case Name:

York Condominium Corp. No. 482 v. Christiansen

Between

York Condominium Corporation No. 482, applicant, and
Ken Christiansen et al., respondents

[2003] O.J. No. 1802

Court File No. 02-CV-231437CM2

**Ontario Superior Court of Justice
Divisional Court - Toronto, Ontario
C. Campbell J.**

April 3, 2003.

(11 paras.)

Counsel:

Jonathan H. Fine, for the respondents, Ken Christiansen,
Michael Christiansen, Wendy Christiansen, Penny Ible, 135 Marlee Holdings Inc. and Rainbow
International Real Estate Developments Ltd.
No counsel mentioned for the applicant.

¶ 1 **C. CAMPBELL J.** (endorsement):— This is a motion for leave to appeal from the decision of Lane J. relating to the interpretation of provisions of the Condominium Act. At issue on this motion is only one part of that decision. What is not at issue on this motion is the question of the lien rights of the Condominium Corporation. What is at issue is the rights of attornment potentially as between the Condominium Corporation and a mortgagee of an individual unit but more particularly as between the Corporation and an owner of multiple units.

¶ 2 Counsel for the moving parties (the respondents) is that there is good reason to doubt the correctness of the decision of Lane J. since distinguishing as the decision does between the security rights pertinent to a claim for lien and that of attornment of rents is inconsistent.

¶ 3 The essence of the argument about correctness focused on the potential prejudice to a mortgagee of a single unit where that owner is of a single unit compared to a mortgagee where the owner has several units where only 1 or some but not all are in arrears of common element payments.

¶ 4 Having heard the submissions I am not satisfied that there is indeed reason to question the correctness. I can well understand the distinction made between the security priority of the lien process and the remedy of attornment as between the Condominium Corporation and the owner.

¶ 5 Counsel for the moving party urges that the decision of Lane J. in one way interprets the scheme of the Act on a "unit by unit" basis and in another on an "owner by owner" basis.

¶ 6 I am not satisfied that there is good reason to doubt the correctness of that decision. There are different interests owner, Corporation and mortgagee with different remedies. It does not follow that the approach to each need be identical.

¶ 7 Lane J. relied on the principal of statutory interpretation articulated by Iacobucci J. in Rizzo & Rizzo

Shoes Ltd. (Re) [1998] 1 S.C.R. 27 namely contextual and ordinary sense within the scheme of the Act.

¶ 8 Mr. Fine in an able argument urges that there is importance to an appellate court considering this matter given the potential for differential treatment between mortgagees. The case before Lane J. did not involve a mortgagee and there is nothing before me to suggest that there is a significant importance to condominium mortgagees generally from the decision in issue. Indeed it could be argued that there is an importance to mortgagees generally to have common element expenses paid to the Corporation in a timely fashion by whatever means.

¶ 9 Ms. Conway for the Corporation submits correctly in my view that not only is there no conflicting decision warranting leave being granted but that the only other decision that is relevant namely that of Nordheimer J. in MTCC1175 v. Irving A. Burton Ltd. (1999), 25 R.P.R. (3d) 268 was relied on and consistent with the decision of Lane J.

¶ 10 Even if I could make some distinction on the facts both decisions are consistent.

¶ 11 I am not satisfied that leave is appropriate taking into account both branches of the test under Rule 62.02(4)(b) without consideration of sub-rule 4(a). I am satisfied as to its correctness and that the required degree of public importance is not present. Counsel have agreed that an appropriate level of costs which shall be to the Corporation on a partial indemnity basis if \$2500 and I so fix.

C. CAMPBELL J.

QL UPDATE: 20030709

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