

Headline: **The Case of the Unsuccessful  $\frac{3}{4}$  Vote Resolution:  
The Role of an Administrator in Assessing Special Levies**

Publication date: Fall 2003

Publication: CHOA Journal

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The Supreme Court recently considered whether an Administrator could be given the power to assess a special levy on owners without the owners having approved the special levy by a  $\frac{3}{4}$  vote.

The owners in a strata development were faced with two options to repair their building. One option was a complete recladding of the exterior at a cost of approximately \$4.7 million. The other option was a more modest repair for a cost of \$750,000.00. In order to carry out either of the repairs the owners were required to approve a special levy. The owners voted on both special levies at two meetings, however, neither special levy could achieve a  $\frac{3}{4}$  vote as required by the *Strata Property Act*.

An owner Petitioned the Court for the appointment of an Administrator. The Petition requested that the Court appoint an Administrator and provide the Administrator with the power to choose which repair option should be undertaken and to assess the owners a special levy in the amount required to pay for the repair.

The Judge considered whether section 174 of the *Strata Property Act*, which permits the Court to appoint an Administrator, allows the Administrator to disregard the need for a  $\frac{3}{4}$  vote when one is clearly required by the Act. Section 108 of the *Strata Property Act* requires that before a special levy can be assessed against the owners, the levy must be approved by a resolution passed by a  $\frac{3}{4}$  vote at an Annual or Special General Meeting.

The Judge confirmed that the Strata Corporation and the owners are two separate entities and that the owners had specific powers, such as approving a special levy by a  $\frac{3}{4}$  vote, which were distinct from the powers of the Strata Corporation. The Judge stated that section 174 of the *Strata Property Act* which provides that the Court may appoint an Administrator to “exercise the powers and perform the duties of the Strata Corporation” did not permit an Administrator to exercise the powers and duties of owners. The Judge concluded that section 174 of the Act did not permit the Court to grant an Administrator the power to disregard the need for a  $\frac{3}{4}$  vote.

The Judge then stated that in cases such as the one before the Court, where the Strata Corporation was obligated under the Act to repair the building but where the owners were unable to obtain a  $\frac{3}{4}$  vote to undertake the repair, the Court could order the special levy under section 165 of the *Strata Property Act*. Section 165 provides that the Court may order the Strata Corporation to perform a duty it is required to perform under the Act and it may make any Order it considers is necessary to give effect to such an Order.

The Judge stated that the Court could use section 165 to order that the owners pay a special levy. In this case, however, as that request was not before the Court, no Order was made in that regard.

The case confirms that an Administrator may only exercise the powers and duties of the Strata Corporation. When a decision requires the approval of the owners, either by majority vote or  $\frac{3}{4}$  vote, the Administrator cannot be given the power to disregard the need for such a vote. Only a Court is able to make an Order, which overrides the need for a vote of the owners.

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