

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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Headline: **The Case of the Unapproved Order for Sale Application**

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The Supreme Court of British Columbia recently considered whether a strata corporation must obtain a 3/4 vote approving a law suit before the Strata Corporation could apply to the Court for an order to sell a strata lot in cases where an owner has not paid strata fees or special levies.

Section 171 of the *Strata Property Act* provides that the Strata Corporation may sue as a representative of all owners, except any who are being sued, about any matter affecting the strata corporation, including, money owing under the *Strata Property Act*. Section 171 further provided that before the strata corporation sues under this section, the suit must be authorized by a resolution passed by a 3/4 vote of the owners at a general meeting.

In the case before the Court, the strata corporation had filed a lien against the owner's strata lot, and had then applied to the Court for an order to sell the strata lot, but the strata corporation had not obtained a resolution approved by a 3/4 vote which authorized the law suit.

The question for the Judge was whether a 3/4 vote was needed before the strata corporation applied to the Court for the order for sale. In answering this question, the Judge considered section 112 of the *Strata Property Act* which provided that:

- 1) Before suing ...to collect money from an owner or tenant, the strata corporation must give the owner or tenant at least 2 weeks' written notice demanding payment and indicating that action may be taken if payment is not made within that 2 week period.
- 2) Before the strata corporation registers a lien against an owner's strata lot under section 116, the strata corporation must give the owner at least 2 weeks' written notice demanding payment and indicating that a lien may be registered if payment is not made within that 2 week period.

The Judge determined that section 112 of the Act provided strata corporations with two methods of dealing with owners who have failed to pay amounts owing to the Strata Corporation. The strata corporation could either sue, under section 112(1) or it could register a lien under section 112(2).

Section 116 of the Act set out the circumstances under which the strata corporation could register a lien against a strata lot owner. The Judge noted that a strata corporation could only register a lien in very limited circumstances such as to collect strata fees or a special levy, to obtain a reimbursement for work done pursuant to a work order, or to collect the strata lot's share of a judgment against the strata corporation.

Section 117 of the *Strata Property Act* provided that after a strata corporation had registered a Certificate of Lien against a strata lot, the strata corporation may apply to the Court for an order for the sale of the strata lot.

The Judge concluded that the registration of the lien and the application for the order for the sale of the strata lot was a separate process from the process of bringing a law suit. As a result, the Judge concluded that a 3/4 vote of the owners to proceed with the application for an order for the sale of a strata lot is not required.

Strata corporations may proceed to register a lien against a strata lot if strata fees and special levies are not paid and may then apply to the Court for an order that the strata lot be sold without having to obtain a 3/4 vote of the owners.

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