

**Headline: Court Finds Form G – Certificate of Lien Invalid**

Publication date: Winter 2013

Publication: CHOA Journal

Written by: Veronica Franco / Clark Wilson LLP

We have assisted hundreds of strata corporations in the collection of outstanding strata fees and special levies. Often, when collection files come to us, the strata corporation has already filed a Form G – Certificate of Lien. Usually, the Form G – Certificate of Lien included all of the amounts owing by the owner to the strata corporation as of the date of its filing at the Land Title Office. This means that we regularly see Form G – Certificate of Liens that include the following:

1. Fines for bylaw infractions;
2. Late fees;
3. Insurance deductible charge backs;
4. Other charge backs;
5. NSF charges.

Normally, when this occurred, we recognized the error and ensured that all affected parties were made aware of the fact that the strata corporation was not claiming priority over these amounts in the course of the legal proceedings taken to force the sale of the owner's strata lot. We also assumed that the Form G – Certificate of Lien, although it included improper amounts, was valid so long as there were amounts owing that were permitted to be included. This approach was upheld by the Judge in *The Owners, Strata Plan VR 386 v. Chu* (unreported) Vancouver Registry No. L051770. In that case, the Judge made a distinction between the amount being claimed and the amount found to be owing. In essence, the Judge said that the amount claimed is what is included in the Form G – Certificate of Lien, while it is up to the Judge to determine the actual amount owing under the Form G – Certificate of Lien. Therefore, since the Judge has the authority to reduce the amount claimed by deducting such amounts as fines, late fees, etc., the Form G – Certificate of Lien would still be valid.

More recently, however, the Court has come to the opposite conclusion. In essence, the *Master in Strata Plan VR 386 v. Luttrell*, 2009 BCSC 1680, determined that there was no distinction between the amounts claimed and owed on the Form G – Certificate of Lien. Then, the Master concluded that the Form G – Certificate of Lien was invalid because it contained fines. As a result, the strata corporation was not entitled to an Order for Sale and would have to go through the expense of a new application to obtain judgment for the amounts owing and to obtain the order for sale.

In future, when strata corporations provides us instructions to initiate forced sale proceedings, we will also have to look closely at the Form G – Certificate of Lien that has been filed. If it contains amounts that should not be included, we will discharge the Form G – Certificate of Lien and re-file a new one that is correct. Unfortunately, the strata corporation will not be able to recover the costs of filing the incorrect Form G – Certificate of Lien and discharging it.

As a result of the *Strata Plan VR 386 v. Luttrell* decision, a prudent and cautious strata corporation will need to ensure that a Form G – Certificate of Lien only includes those amounts permitted by operation of section 107, 108 and 116(1), which are:

1. strata fees;
2. special levies;
3. interest on strata fees and interest on special levies provided there is a bylaw that permits the charging of interest and the rate charged does not exceed the maximum rate permitted in the Regulation, which currently is 10% per year compounded annually;
4. reimbursement of the cost of the work referred to in section 85; and
5. the strata lot's share of a judgment against the strata corporation.

If the Form G – Certificate of Lien includes any amounts other than the above, the strata corporation runs the risk of having the lien declared invalid in forced sale proceedings.

Form G - Certificate of Lien: Checklist of What Charges to Include

*Strata Property Act*, SBC 1998, c. 43, s. 116

Determine claims pursuant to s. 116(1) of the *Strata Property Act* which may be included in the lien amount. This amount may include:

1. arrears of strata fees;
2. arrears of special levy(ies);
3. interest on arrears of strata fees if charged pursuant to a Bylaw and in accordance with the Act; or
4. costs of work done to a strata lot pursuant to a Work Order issued by a governmental authority.

This amount may not include:

1. late fines;
2. bylaw fines and violations;
3. NSF charges;
4. administrative charges; or
5. chargebacks for insurance deductibles or third party chargebacks.

NOTE: Any balance forward from a previous property management company or accounting program must be explained and reviewed to determine if amounts included in the balance forward are claimable under the lien.