

Headline: The Case of the Unauthorized Cable Contract

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Does a strata corporation have the jurisdiction to enter into a bulk contract for the provision of cable and internet services to individual strata lots? Many strata corporations have likely entered into bulk cable or internet agreements without considering whether such a contract was within the strata corporation's powers.

In the case of *The Owners, Strata Plan LMS 2223 and Tsubota*, an unreported decision from 2012, the Judge concluded that under the *Strata Property Act* ("SPA") a strata corporation did not have the authority to enter into a contract for bulk cable and internet services for individual strata lots. The Judge held that as a result, the strata corporation also did not have the authority to charge the owners for the service as a common expense.

In *LMS 2223*, the strata corporation had entered into a contract with Shaw Cable in 2008 for the provision of bulk cable and internet services to the residential strata lots. The cost of the service was included in the strata corporation's budget and was approved as part of the budget approval process each year. In 2009, the owners voted by $\frac{3}{4}$ vote to ratify the contract with Shaw Cable.

Ms. Tsubota objected to paying her proportional share of the Shaw Cable invoice and deducted the amount before paying her strata fees. In 2012, the strata corporation applied to Court for an order that Ms. Tsubota pay the amount of \$3,500 which was the amount owing for Ms. Tsubota's share of the cable charges which Ms. Tsubota had failed to pay. Ms. Tsubota argued that she was not obligated to pay the amount for the reason that the strata corporation did not have authority to incur the expense.

The Judge considered whether the wires for the cable and internet service were common property. The Judge concluded that the wiring for the cable was not within boundary walls, floors or ceilings but rather was wholly or partially within a strata lot but was not used in connection with another strata lot. As a result of this conclusion, the wiring did not fall within the definition of common property as set out in section 1 of SPA.

The strata corporation argued that section 38 of SPA permitted the strata corporation to enter into contracts in respect of its powers and duties thereby providing the authority for the strata corporation to enter into the bulk cable contract. The Judge noted that section 3 of the SPA provides that the powers of the strata corporation are to manage and maintain common property and common assets of the strata corporation. Because the cable used to provide the services is not common property and because the strata corporation's powers and duties are limited to maintaining and managing common property, the Judge concluded that section 38 of the SPA did not assist the strata corporation. The Judge held that section 38 of the SPA only authorizes the strata corporation to enter into contracts for which it already has a power pursuant to section 3 of the SPA.

The Judge concluded that the strata corporation did not have the authority to enter into the contract and that the ratification of the contract in 2009 by the owners did not provide the authority. In other words, the owners could not authorize the strata corporation's actions in respect of a matter for which the strata corporation had no authority in the first place.

The Court noted an Ontario decision in which the Ontario Court found that although the Ontario legislation did not provide a strata corporation with jurisdiction for bulk contracts, the bylaws of the particular strata corporation did. However, in *LMS 2223*, the strata corporation was unable to refer to any bylaws which provided the strata corporation with authority for the contract.

The Judge found that Ms. Tsubota was not liable for any charges associated with the Shaw Cable service.

Based on the Judge's analysis, it appears that the outcome in *LMS 2223* would have been different if the strata corporation had registered a bylaw authorizing the strata corporation to enter into the bulk cable contract for the benefit of the owners.

In view of the conclusion that a strata corporation lacks authority to enter into contracts for services for individual strata lots, strata corporations that have entered or that wish to enter into a bulk service contract may wish to amend their bylaws at the earliest opportunity to provide the necessary authority. Additionally, although not a matter raised in *LMS 2223*, it is important to recognize that such expenses would be expenses of the strata corporation and must be allocated by unit entitlement pursuant to section 99 of the SPA.