

Condo Smarts July 31, 2019

The Duty of Council

Dear Tony: Our strata corporation just completed a three-year major upgrade and envelope renovation. We have been planning for this project since 2010, and along with our reserves and small assessments, the outcome was well worth the effort. We are essentially back in a new building with a new look. A matter has arisen that has many owners questioning the honesty of our past strata council. When the building was renovated it was agreed 11 balcony enclosures would be removed and not be replaced as they were a significant maintenance and safety problem. As the project was nearing completion, 4 “sun rooms” were installed on the pent house units, which belong to 2 council members. Our resolution specifically required the removal of all enclosures and no new installations. When questioned about this, the council members advised they had been paid for by the council members and as they were sun rooms, and the previous internal walls had been removed, they were necessary. We are a new council and the 2 of 4 previous council members have since sold their units. In reviewing the final contracts to close out the special levy fund, the contractor and consultant provided us with detailed invoicing and the enclosures, not “sun rooms” as described by the previous council, were paid for by the strata corporation at a cost of \$35,000 each. There is no record of any payment to the strata corporation, and the contractors verified they did not receive payment from the owners. Our council is struggling with what to do next. We have reported this to the corporation, and our owners want us to start a law suit against these individuals, but we are also worried about future liability and cost. Is it possible to sue past owners? Denny J

Dear Denny: As in any dispute, the first recommendation is to contact the parties involved and offer them an opportunity to provide information to remedy the allegations. It is possible there was a payment and it was not applied to the correct account. If this does not resolve the matter, next is to seek legal advice on the options of pursuing the failure to disclose the financial benefit, failure to remove themselves from council while the decision regarding their unit enclosures was being made, and violating the decision of the owners approved resolutions. Council members who act in their own interests and benefit financially on the shoulders of their fellow owners and then sell before they are discovered don't simply clean the liability slate just because they no longer own the unit. Gather as much evidence as possible. Contact the new owners and request copies of the property purchase disclosure statements and any other documentation provided to them by the vendors. Search for copies of building permits that detail permit the enclosures and any work order changes or instruction provided to the consultants and contractors. Council members have a defined standard of care under the Strata Property Act, and while they are held to standard of a comparable volunteer, they are not immune to court action if they are dishonest. In exercising the powers and performing the duties of the strata corporation, each council member must (a) act honestly and in good faith with a view to the best interests of the strata corporation, and (b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. A council member who has a direct or indirect interest in (a) a contract or transaction with the strata corporation, or (b) a matter that is or is to be the subject of consideration by the council, if that interest could result in the creation of a duty or interest that materially conflicts with that council member's duty or interest as a council member, must (c) disclose fully and promptly to the council the nature and extent of the interest, (d) abstain from voting on the contract, transaction or matter, and (e) leave the council meeting (i) while the contract, transaction or matter is discussed, unless asked by council to be present to provide information, and (ii) while the council votes on the contract, transaction or matter. An action against a past council member is not eligible for a strata dispute through the Civil Resolution Tribunal; however, in light of the values, the owners approval by 3/4 at a general meeting for a Supreme Court action may be appropriate.

Tony Gioventu, Executive Director CHOA

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