



October 2013

York Condominium Corporation No. 82 v. Bujold [2013] O.J. No. 1486

The Condominium appealed an earlier decision that dismissed its lien registered against an owner's unit. The Condominium served the unit owner with a Notice of Lien (formerly a Form 14) on June 22, 2007, for arrears up to June 1, 2007. The Corporation subsequently registered a Certificate of Lien on September 25, 2007, over ninety (90) days after providing the Notice of Lien. In 2009, the Condominium sought a court order to obtain possession of the unit. Due to the late registration of the lien, the trial court determined that the Corporation had lost its lien rights.

On appeal, the court determined that the corporation's lien rights had expired, and that the notice provided was for an expired lien. The court recognized that defective notices could not cover subsequent defaults, unlike a properly registered lien. Additionally, the court interpreted section 85(1) of the *Condominium Act, 1998*, to mean that a new lien arises each time a unit owner defaults. Therefore, each default captured within the three month period prior to registration, would create a valid lien. The court also considered section 85(4) of the *Act*, which states:

85(4)-Notice to owner-At least 10 days before the day a certificate of lien is registered, the corporation shall give written notice of the lien to the owner whose unit is affected by the lien.

The court appeared to interpret section 85(4) of the *Act* to mean that notice is required to be given to a unit owner each time a new lien arises; namely, notice is required after each default. In this case, the notice provided by the Corporation was with respect to arrears, which exceeded the lien registration time period of 90 days.

Bottom Line: *Bujold* appears to suggest that condominiums should be registering a certificate of lien for every month a default arises, or every 30 days. Only subsequent cases will tell the industry if this is true. Regardless, this case reminds us that liens should be registered quickly and that waiting rarely serves a condominium. Although it will take time to see how the courts interpret this case, we do know for sure that condominiums are well served to immediately initiate collection procedures as arrears arise, rather than waiting. If a condominium registers a lien within 30 days of the arrears arising, this case serves no difficulty to a condominium.

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