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CONDOMINIUM LAW AND ADMINISTRATION

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Condominium Law and Administration is an invaluable resource for those involved in conveyancing, development, condominium management or the representation of condominium corporations, whether inside or outside of Ontario.

This release features updates to the case law and commentary in Chapters 3 (Condominium Authority of Ontario), 4 (The Declaration and Description), 5 (The By-Laws and Rules), 13 (The Corporation and the Board of Directors), 17 (Financial Management), 23 (Legal Proceedings), 24 (Oppression Remedy), and Appendix K (Provincial Legislation).

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Highlights

- § **17:22. The Automatic Lien**—In *Yang v. Myriad 419 Condominium Corporation* (December 19, 2023), Doc. KBG-SA-01245-2023, Rothery, J., 2023 CarswellSask 660, 2023 S.K.K.B. 278 (Sask. K.B.), Caiyun Yang and Yang Li, each of whom owned a condominium unit in the condominium building (herein "Yang and Li"), experienced an accident in their respective condominium units during their absence. Myriad 419 Condominium Corporation ("the condominium corporation") effected the necessary repairs to the condominium units and invoiced each of Yang and Li accordingly. When Yang and Li refused to pay for the repairs, the condominium corporation registered a lien on each condominium unit owner's property under s. 63 of *The Condominium Property Act, 1993*, SS 1993, c C-26.1 (the "Act"). The condominium corporation contended that the damage to Yang and Li's condominium units constituted "common expenses." Yang and Li claimed that as the condominium corporation had not taken any enforcement action on the liens in the same manner as a mortgage under s. 63(2)(b) of the Act, the liens were statute-barred under s. 5 of The Limitations Act, SS 2004, c L-16.1. Yang and Li sought an order vacating the liens. Given the time and expense involved in pursuing a foreclosure action, the court observed that it was more economical for the condominium corporation to merely rely on the liens, each totalling a few thousand dollars, than to start a foreclosure action against each of Yang and Li. The court dismissed Yang and Li's application to vacate the liens and awarded the condominium corporation its costs of the application in the amount of $1,000, with Yang and Li each assessed costs of $500.00.
- § **24:29. Manitoba Case Law**—In *Porter v. Condo Co. No. 042 5177* (January 23, 2024), Doc. 2203 19890, R.P. Belzil, J., 2024 CarswellAlta 154, 2024 ABKB 41 (Alta. K.B.), the condominium unit owner, Jonah Gordon Porter ("Porter") and other unit owners had been renting out their condominium units for short-term rentals on online platforms such as Airbnb. Condominium Corporation No. 042 5177 (the "condominium corporation") had notified all condominium unit owners that short term rentals violated the short-term rental provisions in the bylaws, where no lease had been entered into. The condominium corporation filed an application seeking to prohibit the condominium unit owners from using their condominium units for short-term rentals. Alleging that the condominium corporation had interfered with that lease and two subsequent leases, and that the condominium corporation had harassed him, Porter brought an application seeking a declaration that the month-to-month lease agreements that Porter had entered into with a number of successive tenants were valid and that the condominium corporation had engaged in improper conduct under s. 67(1)(a)(i)-(iii) of the Act by disabling the parking fob of one of the alleged tenants and by harassing that alleged tenant. The court found that neither Porter nor the purported tenant had a *bona fide* intention to lease nor did Porter intend to have any tenant live in his condominium unit. The court held that s. 32(5) of the Act did not apply to the purported leases and the occupation of Porter's condominium unit by each of the purported, successive occupants contravened the bylaws prohibiting

short-term rentals where no lease had been entered into. Characterizing Porter's attempts to use his condominium unit for short-term rentals as a "flagrant attempt to circumvent" the court's imposition of a permanent injunction, the court held that the condominium corporation's imposition of a $3,000.00 fine and the disabling of the occupant's parking fob were legal, reasonable and rigorous measures imposed by the condominium corporation to enforce the bylaws and thwart their ongoing contravention.

- § **K3:1. Strata Property Act, S.B.C. 1998, c. 43**—In Nwabuikwu v. Remi Realty Inc., 2024 CarswellBC 2197, it was determined that under section 16.1 of the CRTA, if the Court determines that "all matters" are within the CRT's jurisdiction, it "must" dismiss or stay the proceeding. A plaintiff cannot avoid the presumption in section 16.1 for matters within CRT jurisdiction (for example, strata property claims and a Human Rights Code claim) by adding one or more matters which are patently outside the CRT's jurisdiction (for example, a defamation claim). This would frustrate the legislative objectives of the CRTA for claims within its jurisdiction. In some cases, pursuant to section 16.2, the Court may hear a claim if it is not in the interests of justice and fairness for the CRT to adjudicate the claim. An issue or claim may be sufficiently complex to benefit from adjudication by this Court. However, the CRT process provides procedures to address conflicts in the evidence, including a discretion for an in-person hearing with oral testimony. Even if a matter is important to a plaintiff, the CRT should adjudicate strata property claims and intertwined Human Rights Code claims, where the CRT process was designed to address those manner of claims in a timely and efficient manner.