

## Interesting case with appreciated results

We would like to report about a court case where some difficult co-owners met their match. Of course this decision presents a new, interesting and refreshing aspect of the philosophy of our tribunals, so we are pleased with it.

It is something – reaction of the court – you should know so you may, if necessary, re-align your management's practices but the real purpose of our reporting this case to you is to help you keep smiling when something similar happens around your co-ownership; or help you keep smiling when you meet with a co-owner that expresses his frustration. Because you will know two things:

- that it can be worse at other places;
- that, if it continues to be aggravating you can do something about it and get results;

### What is it?

The story we are going to tell you concerns a syndicate of 6 units only; a three storey building with units – two on each floor – located on each side of the central staircase. Each unit has a balcony in the back. Balconies are common portions for restricted use.

As time goes by, all the balconies needed major repairs. The board called for bids and held a special meeting of co-owners in order to inform them about the situation and warn them about a special assessment to levee money. As in too many syndicates, the contingency fund was under funded.

Because it was late in the season, the retained contractor offered to solidify balconies for the winter first step and repair them the following spring; for a reasonable price. All co-owners agreed... except one (of course!).

This opponent was a genuine opponent: "you will never touch my balcony, you understand? It is MY balcony and I shall repair it myself if necessary. Period!"

### Tough fellow

"Period" it was indeed. According to the court decision<sup>1</sup>, this co-owner<sup>2</sup> did repeatedly menace, insult and swear at the contractor's employees when they were on site. Worse! One day the contractor himself was working on the balcony located below, standing on a ladder; he was shot at with a crow bar flung by this tough co-owner before he got down to "express his discontent!"

A bit later, the same "not happy – but really not happy - co-owner" threatened another co-owner with his fists.

All the co-owners were caught in this tornado of discontent; one member of the board even decided to move out. For his part, the contractor worried for the safety of his men and warned the syndicate that he would not touch this co-owner's balcony and that he would invoice accordingly.

It became a place where few people would buy, rent or own.

### First blow

A question you may ask is: "Why didn't these guys call the police?" But they did. And Brazeau – that is the name of the angry co-owner – had been accused and found guilty under article 264.1(1) of the criminal code<sup>3</sup>. Sanctions? Brace yourself:

- Brazeau is forbidden – by court order – to communicate by any means – including talking – with members of the Board and with the contractor;
- Brazeau is barred – by order of the court – to even come close to an assembly of co-owners except by proxy that he can deliver to his wife or another person;
- On threat of going to jail for contempt of court;

### Wow!

Isn't that something!

A co-owner is ordered – because of his attitude and behaviour – not to attend a meeting of co-owners? Write it down! Of course it is an order from a criminal judge; this guy is on probation but still... barred from attending a meeting of co-owners!! It is a first (that we know of); we hope it is not the last when difficult co-owners are involved.

### That's not all, folks!

You really think that would have discouraged our friend – the tough – co-owner? Think again. First he didn't pay his "condo fees" or his special assessments so the syndicate had to sue him.

To the request for "condo fees" the syndicate added the cost of what it had to pay to the contractor and (Ta Da!) asked the Tribunal to add \$1,000 as special damages for all the trouble this co-owner caused.

"Oh yes" Brazeau must have said "you sue me? Then, watch me!" He countersued the syndicate for the costs of repairs to his balcony (\$937.50), loss of use of said balcony (\$250) and a few other small things for a total of 52,081.50.

We are in for a fight, ladies and gentlemen.

### Second blow

Reading the decision we notice that Brazeau's attitude did not change a bit, even before a judge.

"At hearing, the attitude of respondent, especially M. Brazeau assorted with new menaces, did reveal a profound animosity tainted with malice against the syndicate, the present co-owners, the former co-owner Thermen (ex-Board member) and the contractor."

Of course the judge granted all costs owed to the syndicate and (second Ta Da!) \$1,000.00 against M. Brazeau for harassment and damages. This is another first for us dear board members.

We must translate what the judge said on this part of the decision: "The Tribunal cannot grant more than \$1,000.00, the amount claimed which we found plenty justified according to the circumstances and the proof in front of me. This condemnation is against M. Brazeau alone."

Read again: it seems that the tribunal would have given a lot more if the syndicate would not have been shy about asking. Remember that and if you need a copy of this decision – in French, sorry! – call the office.

<sup>1</sup> SDC 15965-15975 Forsyth c. Brazeau & als; (23-01-2009) 500-32-105991-071; ASCQ 882

<sup>2</sup> (actually there were two undivided owners, husband and wife but the leader was the husband)

<sup>3</sup> We are certain that other words would be used if we were talking instead of writing

<sup>4</sup> 264.1(1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat: (a) to cause death or bodily harm to any person;

<sup>5</sup> Liberal translation of paragraph 24 of the judgment <sup>6</sup> Once again, this is a liberal translation.