

In the Court of Appeal of Alberta

Citation: Condominium Plan No. 762 1828 v Marusyn, 2011 ABCA 356

Date: 20111206
Docket: 1103-0025-AC
Registry: Edmonton

Between:

**The Owners: Condominium Plan No. 762 1828
o/a Claregreen Mews**

Respondent
(Applicant)

- and -

Gail P. Marusyn

Appellant
(Respondent)

The Court:

**The Honourable Mr. Justice Jean Côté
The Honourable Madam Justice Marina Paperny
The Honourable Mr. Justice Frans Slatter**

**Memorandum of Judgment
Delivered from the Bench**

Appeal from the Order by
The Honourable Madam Justice L.D. Acton
Dated the 12th day of August, 2010
Filed on the 31st day of January, 2011
(2010 ABQB 523, Docket: 0903-17511)

**Memorandum of Judgment
Delivered from the Bench**

Slatter J.A. (for the Court):

[1] The issue on this appeal is whether the exterior doors and windows of the appellant's condominium unit are a part of the common property, or a part of her own unit. The chambers judge concluded that they were common property: *Condominium Plan No. 762 1828 v Marusyn*, 2010 ABQB 523, 503 AR 251.

[2] When the condominium was built in 1976, the registered plan had endorsed on it:

The common boundary with the common property is the outside face of the outside walls and with any adjacent unit the center of the party wall.

It appears that the doors and windows were initially treated as being part of the units, not a part of the common property.

[3] Before the enactment of the *Condominium Property Amendment Act, 1996*, SA 1996, c. 12, which came into force on September 1, 2000, all doors and windows were part of the units unless otherwise stipulated in the condominium plan. After that enactment, the presumption was reversed by the present s. 9(2)(b) of the *Condominium Property Act*, RSA 2000, c. C-22:

9(1) Unless otherwise stipulated in the condominium plan, if

- (a) a boundary of a unit is described by reference to a floor, wall or ceiling, or
- (b) a wall located within a unit is a load bearing wall,

the only portion of that floor, wall or ceiling, as the case may be, that forms part of the unit is the finishing material that is in the interior of that unit, including any lath and plaster, panelling, gypsum board, panels, flooring material or coverings or any other material that is attached, laid, glued or applied to the floor, wall or ceiling, as the case may be.

(2) Notwithstanding subsection (1),

- (a) all doors and windows of a unit that are located on interior walls of the unit are part of the unit unless otherwise stipulated in the condominium plan, and

- (b) all doors and windows of a unit that are located on exterior walls of the unit are part of the common property unless otherwise stipulated in the condominium plan.
- (3) For the purposes of subsection (2), a reference
- (a) to a door includes the door, the door frame and the door assembly components, if any, but does not include the door casing, trim or mouldings, and
 - (b) to a window includes the glazing, the window frame and the window assembly components, if any, but does not include the window casing, trim or mouldings.
- (4) Notwithstanding subsections (1) and (2), if a condominium plan was registered prior to January 1, 1979, the common boundary of any unit described in the condominium plan with another unit or with common property is, unless otherwise stipulated in the condominium plan, the centre of the floor, wall or ceiling, as the case may be.

There was a transitional provision that allowed owners of existing condominiums to pass a special resolution that would make doors and windows a part of the individual units, but no such resolution was passed by the respondent condominium corporation.

[4] It follows that the exterior doors and windows of the appellant's unit are a part of the common property unless "otherwise stipulated in the condominium plan". The only potentially relevant stipulation is the one providing that the boundary of each unit with the common property is "the outside face of the outside walls". The appellant argues that since the exterior doors and windows are within the outside face of the outside walls, they are a part of her unit.

[5] The chambers judge found that the endorsement on the condominium plan was not sufficient to take the doors and windows outside the statutory presumption. This is correct, because the post-2000 *Condominium Property Act*, which is what is being interpreted here, draws a clear distinction between "floors, walls and ceilings" on the one hand, and "windows and doors" on the other. The present statutory presumption in s. 9(1) and (4) is that for condominiums built before 1979, the boundary is the center of "floors, walls and ceilings", but that after 1979 only the paneling and finishing material of "floors, walls and ceilings" is part of the unit. On the other hand, under s. 9(2) and (3) a different presumption prevails for exterior "windows and doors": under s. 9(2) they are, to the extent described in s. 9(3), a part of the common property. The endorsement on the condominium plan refers only to "walls", and given the structure of the statute, that endorsement should not be extended to cover "doors and windows".

[6] There being no error shown in the decision under appeal, the appeal is dismissed.

Appeal heard on December 2, 2011

Memorandum filed at Edmonton, Alberta
this 6th day of December, 2011

Slatter J.A.

Appearances:

R. Noce, Q.C.
for the Respondent

T.D. Bosse, Q.C.
for the Appellant