

Court of King's Bench of Alberta

Citation: 10060 Jasper Avenue Building Limited v Scotia Place Tower III Inc, 2026 ABKB 275

Date: 20260410
Docket: 1903 13304
Registry: Edmonton

Between:

10060 Jasper Avenue Building Limited and WR Equities Inc

Respondents/Plaintiffs

- and -

Scotia Place Tower III Inc

Appellant/Defendant

**Reasons for Decision
of the
Honourable Justice G.R. Fraser**

Appeal from the Decision by
B.W. Summers, The Honourable Applications Judge

Dated the 26th day of September, 2024
(2024 ABKB 568)

I. Introduction

[1] This is an appeal of Applications Judge Summers' Decision of September 26, 2024, *10060 Jasper Avenue Building Limited v Scotia Place Tower III Inc*, 2024 ABKB 568 [Judge Summers' Decision]. Applications Judge Summers granted the application for summary judgment by 10060 Jasper Avenue Building and WR Equities Inc (the "Respondents") and dismissed the cross application for summary dismissal by Scotia Place Tower III Inc (the "Appellant").

II. Facts

[2] The parties in this case are owners of properties making up the complex previously called "Scotia Place" and now called "Rice Howard Place" which consists of three towers, an underground parkade, and three levels of amenities and retail space ("the Complex"). The legal relationship between the parties is governed by the Owners Agreement and Management Agreement both dated October 31, 1988 (collectively, "the Agreements").

[3] Several portions of the Complex have exterior glass panels. As issues with the exterior glass panels of the Complex arose, a majority of the Owners voted in support of proposed renovations to replace the exterior glass panels ("the Project"). The Appellant voted against the Project. A written resolution was sent to the Appellant proposing modifications to the Project; however, the Appellant did not accept the written resolution or proposed modifications. The Project proceeded but the Appellant refused access for work on its property and did not pay invoices for its purported proportionate share of the Project.

[4] A detailed summary of the factual matrix in this case can be found at paragraphs 2-21 of Applications Judge Summers' Decision.

III. Issues

[5] The issue on appeal is whether Applications Judge Summers' Decision to grant summary judgment and refuse summary dismissal was correct. Specifically, the Appellant submits Applications Judge Summers erred in the:

- i. Interpretation of the Agreements such that the approval of the Project only required a majority vote by the owners, rather than unanimous approval; and
- ii. Characterization of the Appellant's arguments.

[6] For the reasons that follow, the appeal is dismissed.

IV. Standard of Review

[7] Rule 6.14(3) of the *Alberta Rules of Court*, Alta Reg 124/2010 states:

An appeal from an applications judge's judgment or order is an appeal on the record of proceedings before the applications judge and may also be based on additional evidence that is, in the opinion of the judge hearing the appeal, relevant and material.

[8] As outlined in *Rayner v Mizier*, 2026 ABKB 160, the standard of review applied to a decision of an applications judge is correctness: *Bahcheli v Yorkton Securities Inc*, 2012 ABCA

166 at paras 16-18, 30. However, where there is new, relevant and material evidence before the court on appeal, the court must conduct a *de novo* review: *Gudzinski Estate v Allianz Global Risks US Insurance Company Limited*, 2012 ABCA 5 at para 24.

[9] In this case, there is new, relevant, and material evidence on appeal filed by the Respondents: the “New Affidavit” of Darin Comrie, sworn on February 4, 2025. The new evidence makes this appeal a *de novo* hearing. In *Lesenko v Wild Rose Ready Mix Ltd*, 2024 ABKB 333, Justice Feasby provided an in-depth analysis of *de novo* appeals starting at para 57 of the decision. I agree with his analysis regarding the incongruity of the continued use of the *de novo* or correctness standard of review for appeals of Applications Judge decisions.

[10] As I discussed at para 12 of *Intact Insurance Company v 1063878 Alberta Ltd*, 2025 ABKB 315, our Court does not have the luxury of the inefficiencies that such an approach imposes on the Court. Our lead-times are long, delaying the public’s access to justice. The current process does not encourage parties to present their best case before the applications judge. If they are unsuccessful, they can appeal and file new evidence to try and correct any deficiencies. This results in delay and additional costs. I share Justice Feasby’s hope that, in due course, this matter will be considered again by the Court of Appeal and the Rules of Court Committee. Until reconsideration occurs, the correctness standard of review applies, and will be applied in this matter.

[11] Under the correctness standard, in situations where a previous decision maker has misunderstood or misapplied the law, the appellate judge is “free to replace the opinion of the trial judge with its own”: *Housen v Nikolaisen*, 2002 SCC 33 at para 8. However, I may provide only a summary analysis and conclusion with reference to Judge Summers’ Decision if I find the decision was correct: *HOOPP Realty Inc v Emery Jamieson LLP*, 2020 ABCA 159 at para 41.

V. Positions of the Parties

A. Position of the Appellant

[12] The Appellant argues Applications Judge Summers erred in interpreting the Agreements by finding the approval of the Project required a majority vote by the owners, rather than unanimous approval. According to the Appellant, the terms of the Management Agreement are: (i) the Manager must prepare operating and capital budgets every year (s 3.04(b)); (ii) maintenance expenses in those budgets require the approval of all owners (s 3.04(b)); and (iii) the Manager is prohibited from undertaking projects not in the budget (s 3.02(3)(e)). Therefore, Judge Summers’ Decision deprives s 3.04(b) of its meaning as irrespective of the budget, any project may be approved at anytime by the majority of owners (ostensibly s 3.09).

[13] The Appellant also argues Applications Judge Summers erred in characterizing their argument. First, regarding paragraph 36 of Judge Summers’ Decision, the Appellant asserts they did not, at any point, argue the Project was a “Permitted Alteration”. The Appellant clarified their position is that the Project was *not* a “Permitted Alteration” and the Respondents failed to meet their onus of identifying the section of the Agreements which authorizes their actions. Second, regarding paragraph 43 of Judge Summers’ Decision, the Appellant submits they did not, at any point, advance an argument relating to unfairness. The Appellant clarified their argument does not require a finding of “gross unfairness” and the Respondents relied upon a “gross unfairness” argument to override the express wording of the Agreements.

B. Position of the Respondents

[14] The Respondents argue Applications Judge Summers correctly interpreted the Agreements in a manner which was consistent with the fact-specific analysis and the contextual commercial background of the Agreements as a whole and the established principles of interpretation.

[15] The Respondents also argue Applications Judge Summers did not misattribute or mischaracterize the Appellant's arguments. First, the Respondents assert the Appellant misinterpreted Applications Judge Summers' comments at paragraph 36 which must be taken in context with the whole decision and record. The Respondents dispute the Appellant's clarification on this point, arguing the Project was indeed approved by the Owners in accordance with the Agreements. Second, regarding paragraph 43 of Judge Summers' Decision, the Respondents submit when considering the entire context, the comments accurately paraphrase several arguments and underlying themes advanced by the Appellant. The Respondents posit they did not argue "gross unfairness" should override the wording of the Agreements nor is this what Applications Judge Summers determined.

VI. Analysis

A. Interpretation of the Agreements

[16] The parties disagree about whether the Agreements should be interpreted such that the cost of the Project should be shared amongst all the Owners. The Appellant argues the cost should not be shared as the Project was not unanimously approved. In contrast, the Respondent argues the cost should be shared as the Project was approved by the necessary majority of the Owners. After considering the Agreements in their entirety along with the contextual commercial background, Applications Judge Summers determined the Project was an unbudgeted capital project which was approved by the necessary majority of the Owners and as such, the cost should be allocated among the Owners — including the Appellant. I find Applications Judge Summers correctly applied the law to the facts of this case.

[17] The parties agree the Project is appropriately classified as an unbudgeted Capital Project pursuant to s 4.04 of the Management Agreement:

4.04 Fees for Special Projects

Additional fees will be payable to the Manager in respect of certain special "Projects" as hereinafter described undertaken with the specific approval of the Owner or Owners responsible for the cost of such Project....The fees for such Projects will be charged to the Owners and allocated among them on the basis outlined in the Operating Cost Allocation Agreement, and will in part depend on whether the project is to be a joint responsibility of the Owners or the responsibility of any individual Owner as set forth in the Operating Cost Allocation Agreement. The following are the general classes of Project which may be undertaken:

(a) Capital Projects

A capital project is one which will add to the value of the Complex. Generally, the benefit derived from the project will

increase the gross revenue potential or decrease the operating expenses of the Complex. Capital projects include upgrading of existing space and replacement of major components to the building.

[18] Although the Appellant argues the Operating Cost Allocation Agreement only applies to operating costs and not Capital Projects, this provision explicitly indicates a Capital Project (a project which adds to the value of the Complex and includes upgrading or replacing major components) is a Special Project in which fees are charged to the Owners and allocated based on the Operating Cost Allocation Agreement. As such, it is necessary to look at the requirements of the Operating Cost Allocation Agreement, which states Operating Costs will be allocated among the Owners as follows:

...

8) STRUCTURAL MAINTENANCE, REPAIR AND REPLACEMENT

Entire Complex	Pension Fund	88.2
	Bank	6.9
	National	4.9

This category includes the fabric of the building (exterior curtain glass wall and granite panels (including re-caulking), roof, doors, windows, floors, ceiling, etc.); locks and keys, window replacement, door repairs etc.; and repainting the outside of the Complex and the interior of the Common Facilities.

[19] While the Appellant argues the cost of a Capital Project should be allocated according to s 5.03 if the Management Agreement (rather than section 4.04), the result is the same. This provision reads:

5.03 Allocation of Expenses

Each Owner shall be responsible for the payment of expenses identified specifically to such Owner. As to those expenses which are to be borne by the Owners but which have been incurred jointly by more than one Owner or with respect to other properties and cannot be identified specifically to one or more of such Owners or properties, the Manager shall allocate such expenses among the Owners and the properties in a reasonable manner and in accordance with the Operating Cost Allocation Agreement where applicable, and shall from time to time report such allocation to the Owners but at least annually.

[20] While s 5.03 states each Owner shall be responsible for expenses identified specifically to such Owner, it also indicates expenses which cannot be identified specifically to one or more of such Owners or properties shall be allocated in accordance with the Operating Cost Allocation Agreement. Considering the substantial evidence that the Project planned to replace all the glass panels on the Complex (including on the Appellant’s property) and this work was not intended to be an enhancement or aesthetic change, I agree with Applications Judge Summers that this is a situation in which the expenses cannot be identified specifically to one or more of such Owners or properties and expenses must be allocated pursuant to the Operating Cost Allocation Agreement.

[21] Because the cost of the Project was not budgeted, it must receive approval by the majority of the Owners at an Owners Meeting pursuant to ss 6.05, 6.06, and 6.07 of the Owners Agreement. This requirement was satisfied.

[22] While the Appellant argues all Maintenance Expenses must receive unanimous approval, the requirement for unanimous approval under s 3.04(b) only applies to Maintenance expenses included in the Annual Budget and not to unexpected or newly arising Maintenance Expenses. The requirements relating to preparing and approving the Annual Budget under s 3.04(b) cannot be interpreted to impose conditions on how the Owners respond to or address maintenance concerns that may arise after the Annual Budget is approved. Rather, s 3.02(3)(e) can be interpreted to mean unbudgeted capital expenses are to be voted upon:

3.02(3) Notwithstanding the provisions of sections 3.01, 3.02(1) and 3.02(2), the Manager shall not take any of the following actions for any Owner with respect to the Complex or such Owner's portion of the Complex without the prior written approval of such Owner:

...

(e) except as provided in section 3.09, agree to incur any capital expenditure not specifically set out in the then current budget approved by the Owners...

If approval of the Owners is required for any purpose under this Agreement, it may be given only as provided in section 6.07 of the Owners Agreement.

[23] Section 3.09 of the Management Agreement also provides:

3.09 No funds held by the Manager for the account of the Owners or any of them (whether or not in separate accounts maintained for each Owner in accordance with section 3.07) shall be disbursed except in accordance with the following provisions:

(i) the Manager shall be entitled to pay out of such funds all expenditures to third parties properly chargeable to the Owners or any of them hereunder, on behalf of such Owners, provided that at least one of the following applies to each expenditure:

(b) such expenditure is an unbudgeted expenditure of less than \$5000 (but which together with all other unbudgeted expenditures in the year will not exceed 5% of the total amount of the budget for such fiscal year) or which has received the approval of the Owners or the Owner on whose behalf it is paid.

[24] Considering the Agreements as a whole, the reference to the "then current budget" in s 3.02(3)(e) does not necessarily refer to the Annual Budget contemplated under s 3.04(b) of the Management Agreement. If the parties intended the current budget contemplated under s 3.02(3)(e) to reference the Annual Budget mandated by s 3.04(b), the contract would have explicitly referenced this section or nomenclature. Rather, s 3.02(3)(e) merely refers to a current

budget and only references working in conjunction with s 3.09 of the Management Agreement and s 6.07 of the Owners Agreement.

[25] Bearing this analysis in mind, I find Applications Judge Summers contractual interpretation was correct. I agree that the Project was an unbudgeted Capital Project in which costs are allocated according to the Operating Cost Allocation Agreement. This ground of appeal is dismissed.

B. Characterization of the Appellant's Argument

Paragraph 36

[26] Paragraph 36 of Judge Summers' Decision states:

However, the Defendant argues that the Project was a unilateral decision to carry out a "Permitted Alteration" on the Plaintiffs property under clauses (b) and (d) of Section 6.05.

[27] While the Appellant argues this statement mischaracterizes their argument that the Project was *not* a "Permitted Alteration", I agree with the Respondents that Applications Judge Summers' statement must be read within the context of the entire decision.

[28] When reading Judge Summers' Decision as a whole, it is clear Applications Judge Summers understood the Appellant's position that the Project was not a Permitted Alteration. For example, when summarizing the facts of the case, Applications Judge Summers notes at paragraph 13 that the Appellant responded to the Notice of Meeting to consider the Project by issuing a notice which stated:

- (a) The proposed renovations do not meet the requirements of a Permitted Alteration and will adversely affect the Physical Appearance of Tower III;
- (b) The proposed renovations are not Expressly Permitted or Required pursuant to the Owners Agreement in relation to Tower III;
- (c) Tower III would like to discuss acquiring some or all of the salvaged panels; and
- (d) This notice should be added to the agenda of the March Owners Meeting.

[29] In addition, at paragraph 24, Applications Judge Summers accurately summarizes the Appellant's position as follows:

The Defendant agrees that the Project is a capital project (within the meaning of that term as used in Section 4.04 of the Management Agreement) but there is nothing within the Agreements that requires an owner to pay for capital "upgrades" of another owner. The Defendant also says that although the operational costs of repair and maintenance of exterior windows was a shared expense under Schedule E to the Owners Agreement (which is also called the "Operating Cost Allocation Agreement"), the Project is not an operating cost but a capital cost with respect to property of the respective Owners.

[30] Bearing this context in mind, there are two possible conclusions I can draw. First, Applications Judge Summers' may have made a typographical error. Second, and more likely, Applications Judge Summers could have intended the quotation marks function as scare quotes

to signal a reference to a term used by others which is not endorsed. Considering the whole decision, the sentence could be understood as meaning the Appellant argues the Project was a unilateral decision to carry out a so-called, ostensible, or purported Permitted Alteration (though the Appellant disputes that it was an actual or legitimate Permitted Alteration).

[31] The impact of both conclusions is the same as Applications Judge Summers' previous comments and subsequent analysis indicate she correctly understood and applied the Appellant's position, the facts, and the law. Any potential error in this statement also had no impact on the ultimate determination. As such, I find Applications Judge Summers did not misattribute or mischaracterize the Appellant's argument. This ground of appeal is dismissed.

[32] I need not address the clarification raised by the Appellant under this ground (that is, the Respondents have failed to meet their onus of characterizing the expense and identifying the section of the Agreements which authorizes their actions), as I have dismissed this ground in the previous section and determined Applications Judge Summers' contractual interpretation to be correct.

Paragraph 43

[33] Paragraph 43 of Judge Summers' Decision states:

The Defendant argues that the Plaintiffs' interpretation of the Agreements is extremely unfair in that it is required to pay 4.9% of the cost to replace windows in Towers I and II.

[34] The Appellant argues they did not make any argument related to unfairness in their written or oral argument. I agree there is no record of the Appellant *explicitly* advancing an argument of unfairness. Indeed, the only time the Appellant utilizes the phrase "unfairness" or "fairness" during oral argument is to pre-emptively address any argument by the Respondents that it would be "grossly unfair" for them not to contribute to the cost of the upgrade: see page 22, lines 1-19 of the Transcript of Proceedings taken in Court of King's Bench of Alberta, Courthouse, Edmonton, Alberta on August 20, 2024, filed on December 16, 2024 [ABKB Transcript].

[35] Despite the lack of explicit argument relating to unfairness, the record indicates the Appellant's argument involved an underlying theme of fairness, justice, and right versus wrong. For example, in the ABKB Transcript, the following comments were made by the Appellant:

- i. "... there's nothing in the agreement that allows them to vote to foist their own upgrade costs on to Tower III" (page 12, lines 25-26).
- ii. "... by voting two-to-one, they can foist their costs on to Tower III" (page 12, lines 29-30).
- iii. "... hypothetically, had the budget provided for the full replacement of all of the windows on all three towers, and all of the owners agreed to that, then obviously each of them would have been bearing their own costs, and there would be no injustice about that" (page 16, lines 22-25).
- iv. "And in my submission, this is a case of grasping at straws. Trying to find some justification after the fact, after all justifications have fallen through" (page 18, lines 9-10).

- v. “They have pointed to specific sections of the agreement. None of them says that they can force the defendant to contribute to the cost of their upgrade” (page 19, lines 9-11).
- vi. “... where they overstepped their entitlement is by seeking to force the defendant to pay a portion of their upgrade” (page 21, lines 30-31).
- vii. “But what we dispute is that it’s clear from the agreement that they are required to bear the costs for that upgrade. They cannot force it on to the defendant” (page 24, lines 10-11).

[36] Though the Appellant’s arguments centred on contractual interpretation, the comments above indicate fairness and justice were also apt considerations – the Appellant thought it was wrong or unjust to *force* the Appellant to contribute to the Project costs. As such, I find Applications Judge Summers did not misattribute or mischaracterize the Appellant’s argument. This ground of appeal is dismissed.

VII. Conclusion

[37] Applications Judge Summers did not err in granting the Respondent’s application for summary judgment and dismissing the Appellant’s application for summary dismissal.

[38] The appeal is dismissed.

[39] If the parties cannot agree on costs, they make written submissions to me within 30 days.

Heard on the 12th day of December, 2025.

Dated at the City of Edmonton, Alberta this 10th day of April, 2026.

G.R. Fraser
J.C.K.B.A.

Appearances:

Alexandra C. Bochinski and Courtney Yoo
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for the Respondents/Plaintiffs

Matthew Turzansky
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for the Appellant/Defendant