

Court of King's Bench of Alberta

Citation: Condominium Plan v Owners and Mortgagees, 2025 ABKB 43

Date:
Docket: 2403 06046
Registry: Edmonton

Between:

The Owners: Condominium Plan No 002 1156 o/a Castledowns Pointe

Applicant

- and -

**Owners and Mortgagees of Condominium Units at Castledowns Pointe as Attached in
Schedule "A"**

Respondents

**Reasons for Decision
of the
Honourable Justice G.S. Dunlop**

1. Overview

[1] Inspections following a fire revealed structural deficiencies in a condominium building. Those deficiencies were reported to the City of Edmonton which ordered that the building be evacuated. The condominium corporation obtained advice regarding the cost to repair both the fire damage and the pre-existing deficiencies. The corporation decided that the most economical course was to sell the entire building as is and obtained an order of this Court permitting the condominium corporation to list the entire building for sale. Five months after the order permitting the listing I granted an order authorizing a sale of the entire condominium building and land to a specific

purchaser. Unfortunately, the sale did not close on the original agreed closing date and the condominium corporation agreed with the purchaser to extend the closing date twice, with the current agreed closing date being January 31, 2025. On January 17, 2025, the condominium corporation applied for an order permitting it to relist the building if the sale to the initial purchaser does not close and to use the reserve fund and fire insurance proceeds to pay the condominium corporation's outstanding debts and the future carrying costs of the empty, damaged building and surrounding property. The corporation also applied for an order that some of the insurance proceeds be held back for potential claims against its directors, future carrying costs and future litigation costs. Most of the relief sought by the condominium corporation was not opposed, but several lenders holding mortgages on individual condominium units objected to the proposed use of the insurance proceeds. I granted the order sought by the condominium corporation on January 17, 2025, with these reasons to follow.

[2] The outcome of this application turns on the interpretation of s 61(3) of the *Condominium Property Act* dealing with the Court's powers when terminating a property's condominium status. The mortgage lenders submit that those powers are limited by other provisions in the *Condominium Property Act* and the bylaws of this particular condominium. I disagree because there are no limiting words in s 61(3) and no words elsewhere in the *Act* which expressly limit the Court's powers set out in s 61(3). Furthermore, pursuant to s 34.1 of the *Act*, where the bylaws are inconsistent with the *Act*, the *Act* prevails. The plain meaning of the words "any conditions and ... any directions, including directions for the payment of money" includes directions regarding the payment of insurance proceeds and the reserve fund.

[3] In this case use of the insurance proceeds to pay the condominium corporation's ongoing expenses is necessary because there is no other fund large enough to pay those expenses and the corporation's suppliers cannot be expected to continue providing goods and services on credit indefinitely. Furthermore, the condominium corporation's expenses incurred to date and ongoing are the shared responsibility of the unit owners, and the mortgage lenders' security is the unit owners' equity in their units, which is subject to the owners' liability for condominium contributions and special levies. Lastly, payment of the ongoing expenses benefits all stakeholders, including the mortgage lenders, by preventing deterioration of the building and exposure to uninsured potential liabilities.

[4] Holdbacks for potential future directors and officer's claims, future carrying costs and potential litigation expenses are reasonable.

[5] In these reasons I use the following definitions:

- the Corporation – The Owners: Condominium Plan No. 002 1156 o/a Castledowns Pointe
- the Board – the board of the Corporation
- the Bylaws – the bylaws of the Corporation
- the building – the building known as Castledowns Pointe
- owner – an owner of one or more units in the building
- mortgagee or mortgage lender – a mortgagee of a unit in the building
- the *Act* – the *Condominium Property Act*, RSA 2000, c C-22
- First General – First General Services Edmonton

- GPS Security – GPS Security Group Inc
- the Court – the Court of King’s Bench of Alberta

2. Chronology

2.1 Fire and Investigation

[6] The building was built in 1999 or 2000. It has 83 units. It is 3.5 stories.

[7] In March 2023 a fire destroyed the roof and 4th floor of approximately half of the building with water from firefighting efforts destroying portions of all floors. 44 units were damaged and 39 were uninhabitable after the fire.

[8] Following the fire the Corporation retained consulting engineers to advise it regarding repairs. The engineers provided a series of reports between May and August 2023. The engineers advised that the building had structural deficiencies which pre-date the fire that had to be addressed before the fire repairs could be completed. Furthermore, the engineers advised that the building was not safe for occupation. That led to a decision by the Board on September 1, 2023, that all units should be evacuated, followed within days by an order to evacuate by the City of Edmonton. A strict process of evacuation was followed with the assistance of the engineers and all remaining occupants moved out by December 15, 2023.

[9] The Board retained a quantitative surveyor to estimate the rough order of magnitude to repair the structural deficiencies. The quantitative surveyor estimated that to be \$7,099,050 plus GST. The same quantitative surveyor estimated a rough order of magnitude of \$607,782 plus GST to demolish the building and \$349,652 plus GST to install a roof on the fire damaged portion of the building. The Board received those estimates between November 27, 2023, and January 5, 2024.

[10] In January 2024 the Board convened a special meeting of the owners for a vote on special resolution to terminate the condominium status of the Castledowns Pointe condominium. 66 % of owners or mortgagees, representing 64 % of unit factors, voted in favour, which is less than the 75% vote required to pass a special resolution, pursuant to ss 1(x) and 60 of the *Act*. Nevertheless, the Board considered there was sufficient support for it to pursue termination through an application to Court.

[11] The Board sought an updated reserve fund report which it received at the end of March 2024. The author of that report notes that the estimated cost to remediate the fire damage and structural deficiencies was between \$5.7 million and \$7.1 million. The report assumes that the remediation expense would be financed by an insurance claim or a special assessment.

2.2 Action to List and Entire Property and Terminate Condominium Status

[12] On March 26, 2024, the Corporation commenced this action by Originating Application. The relief sought includes:

15. An Order terminating the status of the condominium corporation.
16. An Order setting a process for the administration of the condominium corporation affairs during the winding up of the condominium corporation, including an Order for payment of debts and interim operational expenses.
17. An Order setting a process for the marketing and sale of the units and lands located on the condominium parcel, including approving any offer to purchase.

18. An Order directing the distribution of the condominium corporation net sales proceeds, net insurance proceeds, and net assets on the basis of unit factors or on such other basis that this Honourable Court directs.

[13] On April 18, 2024, the Corporation obtained an order regarding service of the originating application and adjourning the hearing of the application to May 3, 2024, in morning Justice chambers.

[14] On May 3, 2024, Bercov, J granted an order permitting the listing for sale of the entire Castledowns Pointe condominium either as a single parcel or all units collectively and adjourning the balance of the application to be heard on the commercial list. The May 3, 2024, order includes the following provision:

5. Prior to accepting any offer for purchase which may be received, or at the time of an Application to accept an offer or offers, the Court will determine a procedure for the mortgagees to provide evidence of the amount owing to them; the mechanism to obtain a deficiency judgement in the within action, if necessary; and determining the priority of interests in a Unit, and directing the distribution of proceeds of sale.

[15] The Board selected a realtor who marketed the property resulting in two offers received in July 2024.

[16] On August 2, 2024, the Corporation filed an application for an order permitting it to accept one of the offers received in July and for other relief regarding closing the sale and distributing the proceeds. That application was scheduled for October 9, 2024, on the commercial list.

[17] On October 8 and 9, 2024, immediately before the hearing of the application, the Corporation received four new offers to purchase the entire Castledowns Pointe property.

[18] On October 9, 2024, following a hearing in chambers on the commercial list I granted an order approving the acceptance of one of the offers with a closing date of November 28, 2024.

[19] Paragraphs 11 – 14, 23, and 27 of the October 9, 2024, order delay the termination of condominium status and dissolution of the Corporation until after closing and distribution of the sale proceeds.

[20] At the time of my October 9, 2024, order, the Corporation owed First General and GPS Security for scaffolding, site security and other related charges. The amounts anticipated to be owing at the end of October 2024 were \$85,654.47 and \$221,777.27, respectively, for a total of approximately \$307,000.

[21] Some aspects of my October 9, 2024, order, were opposed by some mortgage lenders, including paragraph 9, which reads:

9. The Proceeds may be used to pay the following on or after the Closing Date without further Order:

- a. Payment to Canada Revenue Agency, the amount of [amount] of any Goods and Services Tax (“GST”) payable as a result of the sale transaction approved by this Order, if any;
- b. Real estate commissions to the Realtor in accordance with the Judicial Listing Agreement;
- c. Property taxes owing to the City of Edmonton in respect of any Unit as at the Closing Date, including any penalties;

- d. Reasonable legal fees to Conveyancing Counsel to convey the Lands, such legal fees not to exceed \$15,000 (plus GST and disbursements);
- e. Payments owing to First General Services Edmonton for services provided to Castledowns Pointe up to and including the Closing Date, plus any costs for demobilization;
- f. Payments owing to GPS Security Group Inc. for services provided to Castledowns Pointe up to and including the Closing Date;
- g. Legal fees to Willis Law in the amount of \$230,286.04 as per the Certificate of Review of Lawyer's Charges issued by Dennis Pawlowski, Review Officer and filed on May 29, 2024, in Court of King's Bench action number 2403 08928; and
- h. Payments owing to any other vendor or incurring of expense, which in the reasonable opinion of the Board is properly owed or incurred by the Corporation for the benefit of the Corporation or for the purpose of preserving the Lands, the total of such payments not to exceed \$100,000 without further Order of this Court.

[22] Paragraphs 15 to 22 of the October 9, 2024, Order set out a process for determining amounts owed to the Corporation and to any mortgagee with respect to each unit, including a determination by the Court, if necessary.

[23] The October 9, 2024, order includes in paragraph 23(a) an authorization for the Board to resolve insurance claims and to direct the Corporation's insurance trustee. Paragraph 23 (b) reads:

All remaining and future insurance funds advanced by the insurers of the Corporation be held in trust for the benefit of the Corporation, its Owners and mortgagees to be administered by High Clouds Inc., as Insurance Trustee of the Corporation.

[24] Paragraph 24 reads:

Notwithstanding the termination and transfer of title of the Lands contemplated in this Order, it is declared that any mortgagee holding a registered interest registered against title to the Unit immediately prior to the Closing Date shall have and retain their interest as a secured creditor against the respective Owner's share of the Net Sale Proceeds and assets of the Corporation including future assets, which include but are not limited to insurance proceeds and any proceeds from any action, claims, or demands of the Corporation, which shall stand in the place and stead of the Lands and Unit as security for the obligations owed by such Owner to such mortgagee and in the same priority as existed immediately prior to the Closing Date.

[25] The sale did not close on November 28, 2024. The purchaser sought, and the Corporation agreed to, two extensions. The current closing date is January 31, 2025.

[26] The amounts owing to First General and GPS Security have grown. The Corporation anticipates those debts will be \$130,197.23 and \$346,089.04 respectively as of January 31, 2025, for a total of approximately \$476,000.

[27] The Corporation owes Willis Law \$427,918.42 for legal work up to October 31, 2024. All of those accounts have been assessed and approved by the review officer pursuant to the rules.

[28] On January 7, 2025, the Corporation filed an application for an order permitting it to relist the property and accept an alternate offer, if necessary, and to permit release of insurance proceeds and reserve funds for the benefit of the Corporation and to pay the Corporation's debts and liabilities. I heard and granted that application on January 17, 2025, with these reasons to follow.

2.3 Insurance and Related Claims

[29] The Corporation made a claim to its property insurer for fire damages which generated advances initially paid to the Corporation. In October and December 2024 \$2.9 million of those funds were transferred to an insurance trustee.

[30] The Corporation's property insurance cover was subject to the following limits for particular losses:

- security costs \$10,000
- professional fees \$10,000
- extra expense \$50,000
- catch all aggregate \$50,000

[31] The Corporation incurred actual expenses for those things exceeding each of those limits.

[32] The Corporation also pursued a claim for the cost to repair the structural deficiencies, which was initially rejected by its insurer, but which may be pursued further by the Corporation.

[33] The Board and its advisors investigated seeking contribution from the original developers of the Castledowns Pointe project and found that the two corporations involved were struck or dissolved and existing related corporations were not prepared to contribute voluntarily.

2.4 Insurance Coverage Post Fire

[34] In late September 2023 the Corporation's insurers advised that they would not renew the property and liability policy, which was due to expire on October 1, 2023, although they did provide a short-term extension. The Corporation's broker assisted in obtaining replacement insurance at increased cost, expiring December 1, 2024.

[35] In December 2024 and January 2025, the Corporation spent \$18,065 and \$18,325 to extend property, liability and related insurance during each extension of the sale agreement. If the sale does not close on or before January 31, 2025, further extensions will be required.

[36] The Corporation's insurance broker has been unable to obtain continuing directors and officers' insurance for the Corporation. The previous policy expired on December 1, 2023, and the extended reporting period expired December 1, 2024.

[37] Section 47(7) of the *Act* requires the Corporation to maintain directors and officers' insurance. Section 58 of the Bylaws requires the Corporation to indemnify officers and employees in certain circumstances.

3. Financial Position

[38] The Corporation's current and anticipated payables due as of the end of January 2025 total approximately \$955,313.91 of which approximately \$875,000 is owed to First General, GPS Security and Willis Law.

[39] Ongoing carrying costs for the preservation of the building and the surrounding land are \$81,025 per month, including \$25,000 for security (GPS Security), \$20,000 for scaffolding rental (First General) and \$19,000 for insurance.

[40] The Board together with its advisors estimate future expenses to wind up its affairs to be \$610,000.

[41] The Corporation's operating account balance as of January 2, 2025, is \$48,008.57.

[42] As of December 31, 2024, more than half of the 83 units are in arrears of their condominium contributions for more than 30 days.

[43] The balance in the Corporation's reserve fund has dropped over time as follows:

- December 31, 2023, \$533,692.28
- June 30, 2024, \$213,475.50
- January 2, 2025, \$62,072.88

[44] Presently \$34,212.65 of the reserve fund is held in a non-redeemable GIC with a term ending December 5, 2028.

[45] As of December 31, 2024, the insurance trustee holds \$2,912,875.17 consisting of insurance proceeds and interest.

4. Adjournment

[46] Several respondents submitted that the application was premature and that I should adjourn it until after January 31, 2025 to see whether the original sale closes. In their submission, the facts would be clearer then. I agree that the facts would be clearer, but the law would be the same. The outcome of this application turns on an interpretation of the *Act*. A change in the facts of this case would not change the meaning of the *Act*. Furthermore, the Corporation does not have sufficient funds in its operating account to pay the monthly expenses of preserving the property. There would be serious prejudice to the Corporation and to all interested parties if I granted an adjournment, which is why I did not do so.

5. Condominium Property Act

5.1 Insurance and Termination of Condominium Status

[47] Section 47 of the *Act* addresses insurance. Section 47(5) reads:

Any payment by an insurer under a policy of insurance for the destruction of or damage to a unit or the common property must, notwithstanding the terms of the policy,

- a. be paid to the insurance trustee designated in the bylaws or, if the bylaws do not designate an insurance trustee, to the corporation, and

- b. be used forthwith, subject to sections 59, 60 and 61, for the replacement or repair of the insured property that was destroyed or damaged.

(underlining added)

[48] Sections 61 and 62 of the *Act* read:

61(1) An application to terminate the condominium status of a building or parcel may be made to the Court by the corporation, an owner, a registered mortgagee of a unit or a vendor under an agreement for sale of a unit.

(2) On an application under this section, if the Court is satisfied that, having regard to the rights and interests of the owners as a whole, it is just and equitable that the condominium status of the building or parcel should be terminated, the Court may make a declaration to that effect.

(3) When a declaration has been made pursuant to subsection (2), the Court may by order impose any conditions and give any directions, including directions for the payment of money, that it thinks fit for the purpose of adjusting as between the corporation and the owners and as among the owners themselves the effect of the declaration.

(4) On an application to the Court under this section, an insurer who has effected insurance on the building or a part of it, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or counsel.

62(1) On the condominium status of the building or parcel being terminated under section 60 or 61, the corporation shall forthwith file with the Registrar a notice of the termination in the prescribed form.

(2) On receipt of the notice referred to in subsection (1), the Registrar shall make a notification in respect of the notice on the condominium plan in the manner prescribed by the regulations and on the notification being made, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.

(3) On the filing of a notice of the termination with the Registrar,

- a) the corporation ceases to exist, and
- b) subject to any declaration of the Court made under section 61, any funds of the corporation that are left after the payment of the corporation's debts and liabilities shall be distributed to the owners of the units in the plan in shares proportional to the unit factors of the owners' respective units.

[49] Those sections were addressed by O'Ferrall, JA in his concurring reasons in *Kay Kay Corporation v Condominium Corporation No. 072 4807* 2017 ABCA 335 at para 34 and 36:

Section 62(3)(b) of the *Condominium Property Act* provides that when the condominium status of the land and buildings of a condominium is terminated, there is a presumption that any funds of the corporation left after payment of the corporation's debts or liabilities are to be distributed to the owners of the units in shares proportionate to the unit factors of the owner's respective units.

...

In ordering the termination of a condominium, the court does have a discretion under 61(3) of the Condominium Property Act to give directions for the payment of money that it sees fit for the purpose of adjusting as among the unit owners; but unless there has been agreement to the contrary among the unit owners, the benefits and burdens of condominium ownership are shared on the basis of unit factors.

[50] The mortgage lenders submit that the limiting words in s 61(3) “for the purpose of adjusting as between the corporation and the owners and as among the owners themselves the effect of the declaration” prevents me from ordering payment of the insurance proceeds to cover the Corporation’s debts. I disagree for several reasons.

[51] First, s 47(5) requires insurance proceeds to be used for repairs, but “subject to sections 59, 60 and 61” and s 61(4) gives an insurer the right to appear on a termination application. Those provisions support the interpretation that “money” in s 61(3) includes insurance proceeds referred to in s 47(5).

[52] Second, “adjusting as between the corporation and the owners” is broad enough to include ensuring that the Corporation’s debts are paid before any funds are released to the owners pursuant to s 62(3).

[53] Third, while the *Act* makes numerous references to mortgagees, it is silent regarding payments to mortgagees in any circumstances, including from insurance proceeds or when condominium status is terminated. References to payments, such as in s 62(3) are to payments to owners only. An owner’s entitlement to payment of insurance proceeds and funds of the corporation are part of the bundle of rights of condominium ownership which an owner may mortgage. A mortgagee has no greater rights than the mortgagor, so the mortgagee is necessarily affected by any adjustments affecting an owner. It is unnecessary to specifically refer to mortgagees in ss 61(3) and 62(3) of the *Act*; mortgagees are affected as a consequence of the owners being affected.

[54] Fourth, ss 59 through 62 of the *Act* used broad language covering a wide range of potential circumstances in which the viability of a condominium may be compromised. The intent of the legislation is to give the Court broad discretion to fashion a remedy appropriate to the specific circumstances in the case before the Court.

[55] No party on this application argued that s 61(3) does not authorize an order regarding payment from a condominium corporation’s reserve fund. For the same reasons as set out above, I find that it does.

[56] I interpret s 61(3) of the *Act* to give the Court the power to order payment of a condominium corporation’s debts and ongoing expenses from insurance proceeds and the reserve fund and to direct holdbacks from those funds.

5.2 Priority of Contributions and Special Levies

[57] Sections 39(1) and 39.1(2) of the *Act* read:

39(1) A board may by resolution

- (a) determine from time to time the amounts to be raised for the purposes of the operating account and the reserve fund and may raise those amounts by levying contributions on the owners at regular intervals

(i) in proportion to the unit factors of the owners' respective units, or

(ii) subject to the regulations, and if provided for in the bylaws, on a basis other than in proportion to the unit factors of the owners' respective units;

(b) determine from time to time amounts to be raised by special levy and raise those amounts in accordance with s 39.1.

...

39.1 (2) A special levy may be levied to raise money

(a) for the payment of unexpected and urgent maintenance, repair or replacement of the real and personal property of the corporation, common property or managed property,

(b) to cover unexpected shortfalls in the operating account,

(c) to increase the balance of the reserve fund to meet the requirements in a reserve fund plan required under the regulations,

(d) subject to ss (3), for the payment of a capital improvement,

(e) to satisfy a judgment against the corporation, or

(f) for any other purpose provided for in the regulations.

(underlining added)

[58] Pursuant to those sections, the costs incurred by the Corporation to date and in the future could be levied against the owners in proportion to the unit factors for each unit, and, pursuant to s 39.2, the Corporation could file a caveat against any unit whose owner or mortgagee did not pay the levy. The fact that the Corporation's operating account is insufficient to cover its current liabilities and anticipated future expenses gives the Board the authority to impose a special levy to make up the shortfall. The Corporation has not yet done that, but it could at any time.

[59] Pursuant to s 39.2 of the *Act* the filing of a caveat with respect to unpaid levies gives the condominium corporation a charge against the unit, which survives any subsequent transfer of title in a foreclosure. These provisions were addressed by Graesser, J in *Tutt v The Owners Condominium Plan No. 7822572* 2020 ABQB 213 at para 39 – 42:

The power of an unpaid condominium corporation to file a caveat against the unit would not appear to depend on ownership of the unit. If someone purchases a condominium unit against which there are arrears, the condominium corporation is not barred by a title change from filing a caveat to enforce its claim against the unit itself. This right is a type of exception to indefeasibility and is the underlying reason purchasers and mortgagees require estoppel certificates from condominium corporations to ensure there are no arrears. It is also a reason for prudent purchasers and mortgage lenders to review the condominium corporation's records to look for contributions that have been levied by the board and unpaid, or even approved by but not yet payable.

A mortgagee or purchaser may find a caveat filed for any past contributions regardless of the transfer of title or advance of mortgage funds. While the contribution does not expressly take priority over the mortgage itself, or any other

prior registered encumbrance, it has that practical effect as the caveat cannot be removed unless the amount owed is paid.

Hence the power under s 39.2(3) for a mortgagee to pay any contributions itself and add them to the amount owed under the mortgage.

Some cases consider this so-called "super-priority" of a condominium corporation's charges secured by a caveat against a unit.

[60] The fact that the Corporation could, at any time, impose a special levy to cover the operating fund shortfall, and file caveats for any unpaid levies, thereby obtaining a super-priority over other secured creditors, is a factor in considering whether I should grant the order sought by the Corporation. In other words, what point would there be in forcing the Corporation to go through that effort and expense when the same result can be obtained more efficiently by an order under s 61(3)?

[61] The mortgage lenders submit that the order sought by the Corporation would "make the entitlements of secured parties subservient to unsecured debts". I disagree. The order reflects the intention of the *Act* which is that the Corporation's expenses be paid in priority to owners and mortgagees.

5.3 Variation of Orders

[62] Section 68 of the *Act* permits the Court to vary any order made by it under the *Act*.

6. Bylaw Provisions

[63] The mortgage lenders submit that the Bylaws require that insurance proceeds be paid to the owners and the mortgagees and not applied to the Corporations' debts. I disagree for two reasons. First, the Bylaws cannot limit the Court's powers under the *Act* and second, the Bylaws do not address the circumstances of this case.

[64] The *Act* is legislation. The Bylaws are not. To the extent the Bylaws are inconsistent with the *Act*, the *Act* prevails: s 34.1 of the *Act* and s 2(c) of the Bylaws. The *Act* gives the Court broad discretion; the Bylaws cannot take it away.

[65] The mortgage lenders rely on s 43(c) of the Bylaws which reads:

Where there has been substantial damage and the owners resolve by Special Resolution within one hundred (100) days after the damage or destruction not to repair, the Board shall on behalf of the Owners make application to terminate the condominium status of the Parcel in accordance with the provisions of the Act, and each of the owners shall be deemed to consent to such application. Upon termination of the condominium status:

(i) any liens or charges affecting any of the Units shall be deemed to be transferred in accordance with their existing priorities to the Interests of the respective Owners of the Parcel; and

(ii) the proceeds of insurance shall be paid to the Owners and mortgagees as their respective interests may appear in proportion to their respective interests in the Parcel;

(underlining added)

[66] The owners have not resolved to repair by special resolution. A vote on termination was held but the required 75% majority of owners and unit factors was not obtained. Furthermore, the vote was conducted in January 2024, far longer than 100 days after the fire in March 2023. Consequently s 43(c) of the Bylaws is not engaged.

[67] The Bylaws do not address the situation that actually occurred: a fire in March 2023, an initial investigation of how to repair the fire damage, during which structural deficiencies dating back to the original construction were discovered, leading to an evacuation order in September 2023, and a special resolution to terminate in January 2024 that did not pass. Even if the Bylaws could tie the Court's hands, they would not in the circumstances of this case.

7. Decision

[68] Pursuant to s 61(3) of the *Act* I have the authority on this application to make an order regarding use of insurance proceeds and the reserve fund. I also have the authority to vary previous orders, pursuant to s 68. I find that the order sought by the Corporation is warranted for these reasons.

[69] First, the Corporation is nearly out of money in its operating account. If the sale does not close on January 31, 2025, it has no way to pay the ongoing costs of site security, scaffolding rental and other costs to preserve the property, unless it can do so from the insurance proceeds. The reserve fund can provide some funds, but not enough to pay carrying costs for even one month. Suppliers cannot be expected to extend credit indefinitely.

[70] Second, all stakeholders benefit from the payment of the ongoing carrying costs, because they protect the property from deterioration and they satisfy the insurer's requirements for continuing coverage, without which the Corporation would be exposed to uninsured risks. If the scaffolding supplier decamps or the site security supplier abandons the site, the land and the building will be exposed to waste, potentially reducing the owners' equity and the mortgagees' security.

[71] Third, the Board had the authority to engage professionals, particularly a lawyer, to assist it with the complicated situation following the fire and the discovery of the structural defects. None of the respondents has adduced any evidence or made any argument that any of the costs incurred by the Board were unreasonable either in type or amount. The unpaid invoices are debts of the Corporation.

[72] Fourth, costs incurred by the Corporation are ultimately the responsibility of the owners, in proportion to unit factors, through contributions and special levies. If a unit owner fails to pay either of those, the Corporation can caveat the unit, thereby obtaining a priority over any mortgagee. Presently more than half of the owners are in default of payment of their contributions. While the Corporation could file caveats against those owners' units, it is more efficient to simply permit the payment of outstanding debts from the insurance funds, to which the owners, and through them the mortgagees, would ultimately be entitled in proportion to unit factors.

[73] Fifth the effect of permitting the payment of the Corporation's expenses incurred to date and continuing into the future from the insurance proceeds and the reserve fund is to adjust as between the Corporation and the owners, as contemplated by s 61(3).

[74] Sixth, the Corporation is in breach of s 47(7) of the *Act* by not having directors' and officers' insurance in place, although this does not appear to be the fault of the Board or the Corporation. In addition, the Corporation is obligated to indemnify its officers for certain losses

pursuant to s 58 of the Bylaws. It is prudent for the Corporation to hold back funds for payment of potential claims against directors or officers, until further order of the Court.

[75] Lastly, the Board and the Corporation have the authority and the responsibility to continue maintaining, listing and selling the property and consider pursuing litigation against any purchasers for failure to close. Those activities require funding. It is prudent to hold something back for that.

[76] For those reasons, I granted the order sought by the Corporation on January 17, 2025, which includes a provision that no costs are awarded for that application.

Heard on the 17th day of January, 2025.

Dated at the City of Edmonton, Alberta this 24th day of January, 2025.

G.S. Dunlop
J.C.K.B.A.

Appearances:

Hugh Willis

for the Applicant, The Owners: Condominium Plan No 002 1156 o/a Castledowns Pointe

Coralie J. Mohr

for the Respondent, Toronto Dominion Bank and Bank of Montreal

Stephanie C. Chau

for the Respondent, Royal Bank of Canada

Andrea L. Willey

for the Respondent, Bank of Nova Scotia, Scotia Mortgage Corporation

Michelle Andresen

for some Respondent Unit Owners

SCHEDULE "A" – LIST OF RESPONDENTS**Unit Owners**

June Maxine Duggan	Nadine Eljabi
Nehmat Annette Eljabi	Angele J Plourde
Gordon Husieff	Darell William Chetyrbuk
Sonia Fruhbrot	Waldy Espinoza
Tricia L. Lowrey	Peter Zoranic
Jena Un	Salwa Mohamud
Shirwa Ali	Patricia Brockie
Shane Brockie	Neil J. Godlien
Elaine N. Godlien	Rebecca Rose Ferris
Lisa-Marie Brown	Melinda McComb
1623688 Alberta Ltd.	Jeffrey Co
Moises Fernandez	Evone Foong Liew
Salim Choufi	Wafaa Elzughbi
Brian Murray	Sheena Murray
Seham Mouallem	Ali Mouallem
Linda Cabral	
Lorne Claypool	Christine Claypool
Elizabeth Abou Ltaif	Ziad Abou-Lteif
Chantal Piche	Rabha Ammar
Susan Strebchuk	Cuong Duc Ly
Ching Ngan Long	Jeffrey Chupik
Susanne Averay-Jones	Patricia Lynn Farris
Jaylene Farris	Kelly-Anne M Aurat
Erin Melissa Thompson	Christina Williams
Denise Holm	Maria Millionor Leoparte
Jose Rivera	Mohammed Hussein Sandouga
Suzan Mah'd Masoud	
Mark McComb	Amin Hamid Zahalan
Nga Thi Thuy Bui	Perica Meseldzija
Dragica Meseldzija	<u>Juanita Ta</u>
Leigh O'Quinn	Jessica Lynne Cline
Gladys A. Mina	Suzanna Dobson

Kristen Smith
 Kristen Evans
 Dimce Janeski
 M Dolores Berlin
 Yojaina Chehade
 Michelle Phillips
 Dragica Resnjak-Savka
 Christopher Terrio
 Antonio Gallace
 Muslim Al Farttoosi
 Morris Glena
 Melvin Alexander Lavallee

Elizabeth Aboultaif
 Hoda A Mohamoud
 Ibrahim Darwish

Deogratias Rukandira
 Jasmin Gacho
 Susanne Pasay
 Tao Qing Huang
 Kelsey Elizabeth Doucette
 Leif E Puffer
 Barbara Kuz

Ken Smith
 Jeanette L. Dominico
 Nikolina Janeska
 Kevin S Chehade
 Maila Chehade
 Zeljko Savka
 Sidney Cranston
 Lai Alex Huynh
 Rosa Gallace
 Rosemary Sibanda
 Marian L Glena
 Francis Petras
 Deborah Turner
 Galad S Yousuf
 Shady Darwish
 Asha Hussein
 Rally Gacho
 Deb Orr
 Douglas Nikolic
 Alan William Standerwick
 Eric S Mah
 Lindsay Schreiner

Mortgagees, Encumbrancers, and Interested Parties

CIBC Mortgages Inc.	MCAP Service Corporation
The Toronto Dominion Bank	The Bank of Nova Scotia
Canadian Imperial Bank of Commerce	Servus Credit Union Ltd.
Computershare Trust Company of Canada	Royal Bank of Canada
ATB Financial	Farm Credit Canada
Scotia Mortgage Corporation	Bank of Montreal
ICICI Bank Canada	AST Trust Company (Canada)

Canada Mortgage and Housing Corporation

His Majesty the King in Right of Canada

The Owners: Condominium Plan No. 0021156

The City of Edmonton

Faber Inc. – Trustee in Bankruptcy for D. Rukandira

ATCO Gas and Pipelines Ltd.

CMLS Financial Ltd.

His Majesty the King in Right of Alberta as Represented by the Minister of Seniors and Housing

Frederick & Company Ltd, Licensed Insolvency Trustee for M. Phillips