



## **Status Certificate's Failure to Disclose Unauthorized Alterations**

By Denise Lash on January 06, 2011

An interesting case recently decided by the Ontario Superior Court of Justice, involved a unit owner's unauthorized widening of a doorway and the board's attempt to enforce the provisions in the Declaration.

In Durham Condominium Corporation No. 63 v. On-Cite Solutions Ltd., the respondent, On-Cite, had owned the unit since 2008, which at the time it was purchased, had already had its door widened from 36 inches to 10 feet.



Prior to purchasing the unit, On-Cite requested a Status Certificate and the President of the Board of DCC 63 inspected the unit. Although the President became aware at that time that the unauthorized alteration had been made, no notice of any contravention appeared on the Status Certificate. On-Cite took title to the unit on the basis that the Status Certificate was clear.

Two weeks later, DCC 63 sent On-Cite notice of the unauthorized alteration.

On-Cite retained a structural engineer to make further alterations to ensure the wall was structurally sound, completed drawings and provided a report to DCC 63.

DCC 63, however, took the position that the wall had to be returned to its original condition ie. 36 inches.

The court looked at:

- Whether the Status Certificate estopped DCC 63 from compelling On-Cite to restore the wall to its original condition and;
- Whether On-cite was required to restore the wall to its original condition.

The court found that although the prescribed form of Status Certificate does not provide for the disclosure of any unauthorized alterations, the President had actual knowledge of the alteration, had authority to sign the Status Certificate and to conduct inspections and therefore, should have amended the Status Certificate or provided written notice once he discovered the alteration.



The court also found that section 12 of the prescribed form of Status Certificate "The Corporation has no knowledge of a circumstance that may result in an increase in the common expenses for the unit" as the appropriate place for this to have been disclosed.

What does this decision mean for condominium corporations?

If it is the board's practice that an inspection is carried out prior to the issuance of a Status Certificate, then the corporation may be deemed to have knowledge of any contravention relating to alterations (and perhaps other contraventions) and any failure to disclose this on the Status Certificate, may prevent the corporation from enforcing the declaration.

Many condominium corporations insert wording in the Status Certificate specifically addressing the issue of inspections by providing that the unit has not been inspected and for purchasers to conduct their own inspections to confirm the unit is in compliance.

Even with this added wording, if evidence is later uncovered that the condominium corporation had knowledge of a contravention and didn't disclose it on the Status Certificate, the condominium corporation, may be prevented from taking steps to enforce.

The Court also looked at the reasonableness of restoring the wall to its original condition and found that there was no useful purpose in doing so.

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