

COURT FILE NUMBER 1401-00013

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT CONDOMINIUM CORPORATION NO. 0312235

RESPONDENTS GEOFFREY SCOTT and DONNA SCOTT

DOCUMENT **BRIEF OF ARGUMENT**

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**BRIEF OF ARGUMENT OF THE APPLICANTS,  
CONDOMINIUM CORPORATION NO. 0312235**

Special Chambers Application  
Wednesday, December 3, 2014 at 2:00 PM

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Submitted by:

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## **I. NATURE OF APPLICATION**

1. The Applicant, Condominium Corporation No. 0312235, also known as "Mystic Springs", applies pursuant to section 67 of the *Condominium Property Act*, R.S.A. 2000 c. C-22 (The "Act") seeking a declaration that the conduct of the Respondents amounts to "improper conduct" as defined under section 67(1)(a) of the Act. It is the position of the Corporation that the Respondents have failed to comply with the Act and the Bylaws of the Corporation. The Corporation seeks an Order pursuant to section 67(2)(b) requiring that the Respondents cease the offending behaviour. The Corporation further seeks an award of costs against the Respondent on the basis of a solicitor as rendered to his own client pursuant to section 67(2)(e) and as provided for in the Bylaws of the Corporation.

TAB 1: Excerpts *Condominium Property Act*, R.S.A. 2000 c. C-22

## **II. MATERIALS FILED**

2. Originating Application, filed by the Applicant January 14, 2014;
3. Affidavit of Dean Jarvey, filed by the Applicant January 14, 2012;
4. Affidavit of Donna Scott, filed by the Respondents April 10, 2014;
5. Supplemental Affidavit of Dean Jarvey, filed by the Applicant June 17, 2014;
6. Supplemental Affidavit of Donna Scott, filed by the Respondents June 26, 2014;
7. Notice of Cross-Application, filed June 26, 2014;
8. Affidavit of Geoffrey Scott, as Applicant by Cross-Application, filed June 26, 2014; and
9. Affidavit of Dean Jarvey, as Respondent by Cross-Application, filed August 14, 2014.

## **III. FACTS**

10. The Applicant is a Condominium Corporation created upon registration of Condominium Plan No. 0312235, comprised of 45 units located at 140 Kananaskis Way, Canmore, Alberta. Mystic Springs is fairly unique in that the entire Project is stipulated to be Visitor Accommodation as defined by the Town of Canmore, restricting accommodation within any unit to no greater than 30 consecutive days. As a result, most, if not all units within the Project are rental/ revenue properties.

11. The subject matter of the within proceedings are two units owed by the Respondents, Geoffrey Scott and Donna Scott, legal units 14 and 24, municipal units 114 and 124 respectively, hereinafter referred to collectively as the "Units".

[Affidavit of Dean Jarvey, Exhibit "A"]

12. Included in the Bylaws of Condominium Corporation No. 0312235 is Article 14, which incorporates the following,

14.1 Where a Rental Manager has been engaged by the Corporation for the Project:

(c) no Owner shall rent his or her Unit for Short Term Rentals other than through the Rental Manager; and

(d) no Owner shall frustrate, undermine or otherwise compete with the Rental Manager's operations for the Project

14.3 All Short Term Rentals must be handled by a Rental Manager approved by the Corporation...If the Corporation engages an exclusive Rental Manager for the Project, only that Rental Manager shall be entitled to manage Short Term Rentals for the Project during the term of such engagement.

"Short Term Rentals" means the rental of a Unit for a period of less than 30 days

TAB 2: Excerpts Bylaws of Condominium Corporation No. 0312235

13. Contrary to the Bylaws of the Corporation, since January 2013 the Respondents have offered and entered into Short Term Rentals of their Units independently, refusing to use the Rental Manager, contribute to the Rental Expenses or participate in the Rental Pool. The Respondents have further offered their services and are acting in the capacity of Rental Manager for other Owners/ Units within the Corporation.

[Affidavit of Dean Jarvey, Exhibits "K," "M" and "N"]

14. The Corporation provided notice to the Respondents that their behaviour was contrary to the Bylaws of the Corporation and requested they cease the offending behaviour. Notwithstanding their requests, the Respondents behaviour continues to date.

[Affidavit of Dean Jarvey, Exhibit "J" and "K"]

#### **IV. ISSUES TO BE DETERMINED**

15. The issues to be determined by the Court are as follows:

- a. The Corporation seeks a declaration of this Court that the conduct of the Respondents, offering their Units for Short Term Rental independently, is contrary to the Bylaws and therefore improper conduct pursuant to section 67(1)(a)(i) of the Act;
- b. The Corporation further seeks a declaration of this Court that the conduct of the Respondents, offering their services and acting in the capacity of Rental or Property Manager for other Units with the Corporation, is contrary to the Bylaws and therefore improper conduct pursuant to section 67(1)(a)(i) of the Act;
- c. The Corporation seeks an Order pursuant to section 67(2) of the Act directing that:

- i. The Respondents cease renting their Units independently, outside of the Rental Pool;
  - ii. The Respondents cease offering their services to other Owners and cease acting in the capacity of Rental or Property Manager for other Owners/ Units; and
  - iii. The Respondents shall turn over particulars of any Short-Term Rental brokered for their Units or any other Unit to Waymarker Management Inc; and
- d. The Corporation seeks an Order awarding Costs to the Applicant on the basis of a solicitor as rendered to his own client for all steps taken by the Corporation pursuant to section 67(2)(e) and as provided for in the Bylaws.

## **V. ARGUMENT**

### **A. Improper Conduct**

16. Condominium Corporations are a form of communal ownership. It is generally considered trite law that all parties are required to abide by the Bylaws of the Corporation. This is specifically contemplated under section 32 of the Act, which holds,

32(2) The owners of all units and anyone in possession of a unit are bound by the bylaws.

32(6) The bylaws bind the corporation and the owners to the same extent as if the bylaws had been signed and sealed by the corporation and by each owner and contained covenants on the part of each owner with every other owner and with the corporation to observe and perform all the provisions of the bylaws.

TAB 1: Excerpts *Condominium Property Act*, R.S.A. 2000 c. C-22

17. Section 2.1(d) of the Bylaws states,

Each owner shall adhere to, comply with, and strictly observe this Bylaw and each and every part thereof and all Rules, Regulations, By-laws and Resolutions, in respect of the use of, either or both, his Unit and the Common Property...

TAB 2: Excerpts Bylaws of Condominium Corporation No. 0312235

18. In *Condominium Plan No. 8810455 v. Spectral Capital Corporation*, Chief Justice Moore of the Court of Queen's Bench of Alberta noted the following,

Most condominium corporations are created by statute for two main reasons. Firstly, in order for all the owners to own the common property jointly, it is necessary through legislation to nullify the common law right of an owner to bring an action for the partition of common elements. Secondly, it is to ensure that positive covenants to repair

and maintain, which do not normally run with the land, are enforceable against subsequent owners.

In Alberta, the *Condominium Property Act* (the "Act") and the by-laws registered against title govern the operation of condominiums. Section 26 [now 32] of the Act provides the necessary authority for the control, management and administration of the units. A condominium corporation is ultimately regulated by its own set of by-laws which provide for the control, management and administration of the units. The by-laws bind the corporation and all of its owner to the same extent as if the by-laws had been signed and sealed by the corporation and by each owner.

TAB 3: *Condominium Plan No. 8810455 v. Spectral Capital Corporation*, 112 A.R. 213 at para 21 and 22

19. Justice Lee in *The Owners: Condominium Plan No. 022 1347 v. N.Y.*, a case concerning the eviction of a tenant for non-compliance with the Bylaws, held,

All owners of condominiums are required to obey the Condominium Bylaws, and give up the right to do as they choose in their homes given that their unit ownership is in common, and in cooperation with others. As long as the bylaws are strictly construed against the Condominium Corporation, owners will otherwise not be allowed to disrupt the common scheme by their individual actions in breach of the contract they have entered into with the other owners as signified by the bylaws.

TAB 4: *The Owners: Condominium Plan No. 022 1347 v. N.Y.*, 2003 ABQB 790 at para 3

20. The Bylaws of the Applicant, Condominium Corporation No. 0312235, were properly passed and are registered as Instrument Number 031 350 877 and updated by Notice of Change of Bylaws registered on January 13, 2010 as Instrument Number 101 013 191.

[Affidavit of Dean Jarvey, Exhibit "I"]

21. Pursuant to Section 3.3(h) of the Bylaws, the Corporation is permitted to create Rules and Regulations, so long as these Rules and Regulations are not contrary to the Bylaws of the Corporation or the Act. Section 3.3(h) states,

Make such Rules and Regulations and enact such Resolutions, as it may deem necessary or desirable from time to time...for the control, management and administration of the Project generally, and do all things reasonably necessary for the enforcement of the By-laws, rules, regulation and resolutions...

TAB 2: Excerpts Bylaws of Condominium Corporation No. 0312235

22. Article 14 governs Unit rentals and requires that any individual who leases their unit participate in the rental pool. As nothing in Article 14 prohibits an Owner from using their Unit solely for personal use, the Corporation has created a Policy with respect to the interpretation of Article 14. Specially, in the event an Owner rents their Unit, they are required to do so through the Rental Manager and contribute to the Rental Expenses. In the event an Owner is not renting their Unit, Article 14 has no application.

[Supplemental Affidavit of Dean Jarvey, at para. 15-17]

23. The Court of Appeal has recognized a Board's right to create Rules and Regulations with respect to the governance of the Corporation. It was a finding of the Court in *Maverick Equities Inc. v. The Owners: Condominium Plan 942 2336* that,

The Board is entitled to some considerable scope as to how it will exercise his discretion in granting or withholding consent, and there is nothing objectionable to the Board setting down rules and regulations as to how its discretion will be exercised in the normal course.

TAB 5: *Maverick Equities Inc. v. The Owners: Condominium Plan 942 2336*, 2008 ABCA 221 at para 13

24. Should the Respondents be dissatisfied with the Bylaws enacted or the Rules and Regulations created by the Corporation, the remedy is to have the Bylaws amended by Special Resolution. Until such time as the Bylaws are amended or repealed, all owners must comply with all Bylaws that govern. As was noted by Master Quinn in *Condominium Plan No. 932 2887 v. Redweik*,

I am not prepared to make an order which involves a decision as to the reasonableness of any of the Bylaws or the interpretation of the By-laws, or the fairness with which the By-laws have been applied.

If a sufficient number of the unit owners are unsatisfied with the By-laws in their present form, they should pass a special resolution to change them. If they are unsatisfied with the manner in which the present Board of managers is interpreting the By-laws, they should elect a different Board.

TAB 6: *Condominium Plan No. 932 2887 v. Redweik*, 43 R.P.R. (2d) 154

25. Pursuant to section 37(1) of the Act, "A Corporation is responsible for the enforcement of its bylaws and the control, management and administration of its real and personal property and the common property." The Corporation is therefore statutorily obligated to ensure the Bylaws are followed so long as they remain in force. Pursuant to section 32(2) of the Act, the Respondents are bound by the Bylaws and are therefore statutorily obligated to comply so long as the Bylaws remain in force. Notwithstanding the Respondents' opinion that Article 14 is contrary to section 32(5) of the Act, so long as it remains in force the Respondents are required to abide by the requirements found therein. The Respondents do not deny that they are renting the Units outside of the Rental Pool and acting contrary to the Bylaws of the Corporation. This is, by definition, improper conduct under section 67(1)(a)(i) of the Act.

TAB 1: Excerpts *Condominium Property Act*, R.S.A. 2000 c. C-22

#### **B. Section 32 of the *Condominium Property Act***

26. It is the Respondents' position that Article 14 is contrary to section 32(5) of the Act, which states,

32(5) No bylaw operates to prohibit or restrict the devolution of units or any transfer, lease, mortgage or other dealing with them or to destroy or modify any



easement implied or created by this Act [emphasis added]

TAB 1: Excerpts *Condominium Property Act*, R.S.A. 2000 c. C-22

27. It is the position of the Condominium Corporation that nothing in Article 14 operates to either "prohibit" or "restrict" the Respondents' ability to lease their Units. Black's Law Dictionary defines "prohibit" as "To forbid by law; To prevent or hinder". Restriction is defined as "A limitation or qualification; A limitation placed on the use or enjoyment of property".

TAB 7: *Black's Law Dictionary*, 7<sup>th</sup> ed., s.v. "prohibit"  
*Black's Law Dictionary*, 7<sup>th</sup> ed., s.v. "restrict"

28. Through operation of Article 14 the Respondents are not forbidden or prevented from leasing their units nor is there any limitation placed on their right or ability to do so. The Respondents may lease their units to whomever they choose, as often as they would like and do not require the approval of the Corporation. Instead, the Corporation has created the mechanism by which rentals are to be undertaken, and require that the Respondents, as well as any other Owner who offers their Unit for lease, use this system. Mystic Springs is a unique Project, requiring a unique set of Rules. Chief Justice Moore considered the issue of time-share interests in a Condominium Corporation in *Condominium Plan No. 8810455 v. Spectral Capital Corp* ("*Spectral*"). The issue before the Court was whether this amounted to a commercial purpose. With respect to the time-share concept, Chief Justice Moore noted the following,

In recent years condominium housing has been utilized to deliver specialized type of housing to seniors, handicapped and other members of society. The critical feature of all such developments is a common interest and an agreement to bind themselves through by-laws acceptable to all. This is the essence of what happened at Whiskey Jack. All the purchasers of units in this project were "special families" who decided to purchase units for a weekend retreat in the mountains. All the purchasers had a common interest, which was to escape to the "peace and solitude" of the mountains. They all agreed to be bound by the by-laws.

...

Time sharing is a unique a development as a condominium project and therefore requires its own set of rules and by-laws.

TAB 3: *Condominium Plan No. 8810455 v. Spectral Capital Corporation*, 112 A.R. 213

29. While Mystic Springs isn't a time-share, it is visitor accommodation and not a typical residential project. We would submit that Mystic Springs also requires a unique set of rules and bylaws. It is only through unique rules that the Corporation can properly function in manner that is fair to all members therein. The owners of Mystic Springs jointly created Article 14 and agreed to be bound by it as a means of protecting themselves and their common interests.

30. Though Article 14 does not impact the Respondents' ability to lease their Units, the Courts have recognized a Condominium Corporation's authority to do so through use and occupancy restrictions. In *Devlin v. Owners: Condominium Plan No. 9612647* the Units were subject to a restrictive covenant stipulating "The Grantor shall not lease or permit any unit to be leased or occupied by anyone other than an owner of the unit and anyone related to the



owner of the unit." Justice Power, in finding the restrictive covenant to be void and unenforceable, concluded

The very nature of condominium construction would indicate that some restrictions on the use and occupancy of the individual units, such as provision for one family occupancy, age restrictions of unit owners, anti-commercial use and the like, should be permitted in the restrictive covenant, however, I cannot see how the legislature could have intended to take away ANY fundamental right of an owners right of alienation of his freehold state [emphasis added]

TAB 8: *Devlin v. Owners: Condominium Plan No. 9612647, 2002 ABQB 358*

31. In *Metropolitan Toronto Condominium Corp. No. 850 v. Oikle* ("Oikle") the Court was concerned with an individual who was leasing her unit as an alternative to conventional hotel accommodation. Article IV of the Condominium Declarations, the equivalent of a Bylaw in Alberta, included the stipulation that "each unit shall be occupied and used only as a private, single family residential dwelling and for no other purpose...". Justice Lissaman found as follows,

A major part of the respondent Oikle's argument in this case is that by requiring a unit holder to seek approval prior to renting or leasing their premises, the condominium corporation has unduly restricted the unit holder's rights of alienation. In support of this argument, counsel referred to Peel Condominium Corp. No. 11 v Caroe (1974), 4 O.R. (2d) 543 (H.C.), and Winnipeg Condominium Corp No. 1 v. Stechley, [1978] 6 W.W.R. 491 (Man Q.B.). In both these cases, the condominium rules required the owner of the unit to live in the unit. The owners were prohibited from renting or leasing the unit at all. This is not the case here. A unit holder is allowed to rent the unit, but only in a limited way, for not more than three times a year. In my view, requiring the approval prior to renting or leasing a unit does not unduly restrict the owner's rights of alienation. [emphasis added]

TAB 9: *Metropolitan Toronto Condominium Corp. No. 850 v. Oikle, 1994 CarswellOnt 763*

32. In *Metropolitan Toronto Condominium Corp. No. 1179 v. Zeidan* 44 units of the Project were being rented as short-term accommodation for travelers and business people. The Corporation passed a rule that required any individual use of a unit must be for a minimum three-month duration. In determining this rule to be validly enacted, Justice Molloy found,

Indeed, it is quite common for condominium boards to impose rules restricting the use of units in certain ways. Common examples are rules dealing with fire safety and pets. The fact that a rule cannot be inconsistent with the declaration does not mean that it cannot impose use restrictions that go beyond what is provided in the declaration, as long as those restrictions are consistent with what is in the declaration. Here, the declaration requires that the units be used as residential dwelling units. Rule 7.01 does not prevent the use of units as residential dwelling units; nor does it permit a use that is other than residential. All it does is narrow the range of residential uses that will be permitted. Further, it is not sufficiently restrictive as to completely negate or fundamentally alter the right of owners to lease their units to tenants generally. In my

opinion, Rule 7.01 is not inconsistent with any thing in the Condominium Declaration and is consistent with the characterization of the units as residential. [emphasis added]

33. At paragraph 44, the Court went on to state,

In any event, it seems to be that the Court of Appeal decision in *York Condominium Corp. v. Dvorchik*, [1997] O.J. No. 378 mandates considerable deference to the condominium board in matters of this nature...The Court of Appeal cautioned against "judicialization" of the function of the board and held that a court should not substitute its own opinion about the propriety of a rule unless the rule is "clearly unreasonable or contrary to the legislative scheme". The Court further noted (at paragraphs 5-6)

In the absence of such unreasonableness, deference should be paid to rules deemed appropriate by a board charged with responsibility for balancing the private and communal interests of the unit owners.

TAB 10: *Metropolitan Toronto Condominium Corp. No. 1179 v. Zeidan*, 2001 CarswellOnt 2495

34. Devlin and the decisions of the Ontario Courts stand for the proposition that a Corporation may not entirely take-away an Owners ability to lease their unit, but is permitted to place parameters on any such leasing. The Condominium Corporation submits that as the Respondents are not limited in who they may lease to, when or how often, Article 14 does not operate to take away their fundamental right of alienation and is therefore not offside section 32(5) of the Act. Article 14 is in essence a procedural guideline, a process, in place for the protection of all owners. It is the manner by which the Corporation can ensure that the Bylaws are being followed, as it is only through communal leasing that the Corporation can ensure that all Unit Owners are in compliance. It is only if an owner chooses to lease their unit, and not use is strictly for personal recreational use, that Article 14 is triggered.

35. A further component of Article 14 is the requirement that all who rent their Unit must contribute to the Rental Expenses. The participating Owners are required to contribute 5% of all gross revenue towards marketing while the Respondents contribute nothing. Participating Owners are further required to contribute to Rental Expenses on a unit factor basis as determined by each year's rental management budget, again with the Respondents contributing nothing. It is inequitable to allow the Respondents to continue to reap the benefit of every other Owners' financial contribution while not making any contribution of their own.

[Affidavit of Dean Jarvey, at para. 25-26]

36. The contributing Owners have spent the last ten years creating Goodwill in the name Mystic Springs and building up the Project's reputation as a clean, comfortable and safe place to visit. Requiring an Owner who leases their Unit contribute to the Rental Expenses of the Project is equitable and in no way prohibits or restricts leasing and is therefore not contrary to section 32(5) of the Act.

### **C. Non-Profit Status of the Corporation**

37. The Respondents are seeking a declaration that the Rental Pool is a profit generating activity contrary to section 3.1 of the Bylaws, which states,

The Corporation is not organized for profit. Accordingly, no Owner, Board Member, or person from whom the Corporation may receive property or funds shall receive or be lawfully entitled to legally receive any pecuniary profit from the operations of the Corporation; provided that the foregoing shall not either prohibit, prevent or restrict payment by the Corporation and receipt by the Owners or Board Members of compensation, reimbursement, or remuneration as are herein after expressly provided or prohibit any such person or party from contracting with the Corporation in the normal course of such person's or party's business irrespective of any project to such person or party thereunder.

38. While the Respondents have expressed this "concern," they have provided no evidence that the Rental Pool would be construed as a profit generating activity for the Corporation. On the other hand, the Applicants have provided evidence establishing that no profit is derived by the Corporation through the Rental Pool's operation.

[Supplemental Affidavit of Dean Jarvey, at para. 24-28]

39. Since the inception of this Project, all rental revenue is received and controlled by a Rental Manager. The Rental Manager is responsible for addressing necessary repairs relating to the hotel operations and any costs associated thereto. Rental Expenses are subtracted from gross revenue each month before funds are provided to the Owners. At no time is any of the revenue paid to the Condominium Corporation nor does the Condominium Corporation exercise any control over same. Each individual Owner is then responsible for claiming the income received as rental revenue on their personal taxes.

40. As no profit is generated by the Corporation nor does any Owner receive a profit from the operation of the Corporation, the Condominium Corporation remains a non-profit entity and this status is not in jeopardy.

#### **D. Costs**

41. Based on the foregoing it is the position of the Corporation that the conduct of the Respondents amounts to improper conduct under section 67(1)(a)(i) of the Act and the Corporation respectfully submits they are therefore entitled to an Order directing that the Respondents cease the offending behaviour pursuant to section 67(2)(b). As was noted by Master Smart in *Condominium Plan No. 772 0093 v. Rathbone*,

Section 67(2) of the Act provides that on application by an interested party, if the Court is satisfied that improper conduct has taken place, the Court may direct that the person carrying on the improper conduct cease doing so, award compensation to the applicant if the applicant suffered loss due to improper conduct, and award costs.

TAB 11: Condominium Plan No 772 0093 v. Rathbone, 2010 ABQB 69

42. The Corporation further submits that the costs incurred in pursuing this matter ought to be born by the Respondents on the basis of a solicitor as rendered to his own Client. The Bylaws of the Corporation specifically contemplate that in the event an Owner violates the Bylaws and fails to rectify the offending behaviour, the costs for curing any such infraction shall

be born by the offending party. Section 3.3 of the Bylaws states,

- 3.3 In addition to the powers and rights conferred upon the Corporation under the Act, the Corporation may, and is hereby authorized to:
- (n) in the event of any infraction or violation of, or default under these By-laws or any rules, regulations or resolutions of the Corporation on the part of an Owner, an Occupant, or any of their servants, agents, licensees, or invitees, correct, remedy, or cure, and any costs or expenses incurred or expended by the Corporation in correcting, remedying or curing such infraction, violation or default may be charged to sue Owner and shall be added to and become part of the assessment of such Owner for the month next following the date when such costs or expenses are expended or incurred (but not necessarily paid) by the Corporation and shall become due and payable on the date of payment of such monthly assessment and shall bear interest at the Interest Rate until paid;
  - (o) recover from an Owner by an action for debt in any court of competent jurisdiction any sum of money which the Corporation is required to expend as a result of any act or omission by the Owner, his servants, agents, licensees, invitees, or tenants, which violates the By-laws or rules, regulations or resolutions established by the Corporation and there shall be added to any judgment, all costs of such action including costs as between solicitor and his own client...

TAB 2: Excerpts Bylaws of Condominium Corporation No. 0312235

43. Notice was provided to the Respondents that they were in contravention of Article 14 of the Bylaws and it was requested that they cease the offending behaviour. The behaviour of the Respondents has not altered and they continue to act contrary to the Bylaws. With respect to the issue of costs, the Court of Appeal in *Maverick Equities* awarded The Owners: Condominium Plan 942 2336 solicitor client costs "as provided for in the bylaws."

TAB 5: *Maverick Equities Inc. v The Owners: Condominium Plan 942 2336, 2008 ABCA 221*

44. The Court in *The Owners: Condominium Plan No. 022 1347 v. N.Y* awarded solicitor client costs to the Corporation and provided the following,

The Condominium Corporation is entitled to its costs as the sole reason it is in court proceedings is because the Appellant failed to comply with the Bylaws, and then failed to leave the premises when she was evicted.

The Corporation is entitled to costs on a solicitor and her own client indemnity basis pursuant to s. 86 of the Bylaws.

TAB 4: *The Owners: Condominium Plan No. 022 1347 v. N.Y., 2003 ABQB 790*

45. Section 3.3 of the Corporation's Bylaws amounts to a contractual entitlement to solicitor client costs. All costs expended by the Corporation in this matter are a direct result of the Respondents unwillingness to abide by the Bylaws. Pursuant to section 3.3 of the Bylaws, the costs shall be charged back to the Unit and added to the monthly assessment and bear interest

until paid in full. Pursuant to section 7.9 of the Bylaws, the Corporation seeks a charge against the land for any amount owing to the Corporation, including costs.

TAB 2: Excerpts Bylaws of Condominium Corporation No. 0312235

## VI. RELIEF SOUGHT

46. One must consider the realities of condominiums. There are necessarily restrictions imposed on all owners with respect to behaviour. Mystic Springs is a unique project and therefore unique restrictions are imposed.

47. Pursuant to Section 67 of the *Condominium Property Act*, Condominium Corporation No. 0312235 seeks the following relief:


- a. A declaration that the Respondents have and are in breach of the Bylaws;
- b. Directing that the Respondents shall permanently cease all efforts to rent the Units independently and outside the Rental Pool;
- c. Directing that the Respondents shall permanently cease offering services as a Short Term Rental Manager to other Owners;
- d. Directing that the Respondents shall turn over to Waymarker Management Inc. the particulars of any Short Term Rental that has been brokered for the Units or any other Unit in the Corporation;
- e. Awarding costs on the basis of a solicitor as rendered to his own client, which costs shall be added to and become part of the monthly assessment for the Unit;
- f. Directing that the Corporation may charge interest on any costs incurred with respect to this matter until all amounts owing to the Corporation are paid in full, which interest shall be at the rate stipulated in the Applicant's bylaws;
- g. Granting the Corporation a charge over the lands to enforce payment of any amount owing pursuant to this matter; and
- e. Such further and other relief and this Honourable Court may deem just.

### ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at the City of Calgary, in the Province of Alberta, this 16 day of September, 2014.

McLEOD LAW LLP

Per: \_\_\_\_\_

  
Stephanie D. Whyte  
Counsel for the Applicants