



January 15, 2015

SENT VIA FAX: 1-780-427-0334

Court of Queen's Bench of Alberta
Law Courts Building
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2

Attention: The Honourable Mr. Justice Larry R.A. Ackerl

Dear Sir:

**Re: Condominium Corporation No. 0312235 v. Scott
Action No. 1401-00013
Our File: 100606**

Further to the above noted matter and your correspondence of December 23, 2014, the Condominium Corporation submits that section 5.20 of the Bylaws of Condominium Corporation No. 0312235 reinforces and supports the position of Mystic Springs that Article 14 is in effect a procedural guideline in place for the protection of all owners. There is no conflict between the two provisions.

Section 5.20 of the Bylaws provides the following:

If a number of Owners decided to pool any **rental income**, they may do so with the approval of the Manager. However, under no circumstances will this action obligate or compel any other Owner to join or participate in **this** pool. Nor will **this** pool have an effect financially or otherwise on any other individual Owner [emphasis added]

We confirm that income sharing does occur at Mystic Springs. We submit that there are two main points to be addressed with respect to section 5.20, namely participation in the rental income pool and the financial effect of the rental income pool on non-participating Owner.

1. Participation in the Rental Income Pool

Section 5.20 deals solely with the pooling of rental income and indicates that participation in income pooling is voluntary. Many owners, though not all, have chosen to participate in a rental income pool, as this is of greater financial benefit to them and therefore in their best interest. This is a choice they have made and is not required or mandated. In the event an owner has no desire to participate in income sharing, so long as they contribute to Rental Expenses and utilize the services of the Rental Manager their non-participation is of no concern or consequence to the Corporation.

Article 14 of the Corporation's Bylaws speaks of a "Rental Pool Project". On its face the phrase "Rental Pool" is potentially misleading and may imply that Article 14 is concerned with 'pooling rent' which is definitely not the case. The primary concern of the Corporation through the creation of the "Rental Pool Project" is and always has been to provide the mechanism by which Rentals are to be undertaken and to ensure that each Owner who rents their Unit provides their fair share of Rental Management Expenses. A review of Article 14 makes this clear.

It is through the Owners' use of the Rental Manager that the Corporation has the ability to monitor and control the Rental Process, thereby protecting the Owners and the Corporation

SUITE 300
14505 BANNISTER ROAD SE
CALGARY, AB T2X 3J3 CANADA

CENTENNIAL PLACE, WEST TOWER
2110, 250 – 5th STREET SW
CALGARY, AB T2P 0R4 CANADA

P 403.278.9411 F 403.271.1769 mcleod-law.com



-2-

from the consequences of this being a project made up almost entirely of rental Units rather than continuously occupied residential Units. It is through the sharing of Rental Expenses that the Corporation ensures an equitable sharing of costs associated with making Mystic Springs a clean, comfortable and safe place for the many guests that visit the project each year. An Owner that rents their Unit is obligated to use the Rental Manager and contribute to the Rental Expenses, but is not obligated to participate in income sharing.

2. Financial Effect of the Rental Income Pool

There is a financial benefit to those Owners that chose to participate in the rental income pool but no consequence, adverse or otherwise, to those that do not join. The benefit to participating owners is outlined in section 14.1(b) of the Bylaws which details how income is shared. This section holds as follows:

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

- (b) Rental Revenue shall be calculated and shared on a per diem basis such that an Owner shall share in the Rental Revenue for a particular day only if the Owner's Unit was available for rental through the Rental Manager on that day

This Section does not obligate an Owner to participate in income sharing but simply provides the means by which income is shared amongst those Owners who wish to participate. So long as a Unit is available for rent on a given day, that Owner will share in the revenue generated throughout the pool even if their particular Unit is not rented. This is a benefit that is given to those that participate. There is no financial effect or consequence to any Owner that is not participating beyond not sharing in the rental revenue generated in the Rental Income Pool. It is possible for the Rental Manager to calculate an Owner's returns based solely on the usage of the particular unit, thereby utilizing the Rental Manager without income pooling.

3. Conclusion

Likely due to the benefits of the rental income pool, to date very few Owners within Mystic Springs have chosen to not join; only those using their Units strictly for personal use and the parties contesting the validity of Article 14. Should any Owner not wish to participate in income sharing, the Corporation would not construe this as being offside the Bylaws or the Act nor would they take any steps to force them.

The Corporation submits that nothing in the policy or practice of Mystic Springs requires an Owner to pool income with any other Owner. Section 5.20 of the Bylaws reinforces the Corporation's contention that Article 14 of the Bylaws is akin to a use and occupancy restriction, the purpose and effect of which is not to restrict leasing but simply to control the process. 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.

Yours truly,
MCLEOD LAW LLP


STEPHANIE D. WHYTE
direct: (403) 254-3687
swhyte@mcleod-law.com
Assistant: Myleen Ring
direct: (403) 254-3691
mring@mcleod-law.com

cc: Miller Thomson LLP
Attention: Roberto Noce, QC
VIA FAX: 1-780-424-5866
Your File: 179920.1