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lawyers

Memorandum

To: President, Strata Council
From: Tim Peters
Date: December 31, 2010
File No: 5674-001

Re: One Wall @ WALL FINANCIAL CORPORATION et al.

Pleadings

I attach for your review, the Strata Corporation's Notice of Civil Claim and Responses filed by the Wall Group of defendants and by ING Insurance. We have not yet received a Response from National Home Warranty. In all likelihood, National and ING will be represented by the same law firm. However, because of a suggested conflict between the two parties, common counsel has not yet been appointed. Rather than delay the close of pleadings further, ING has filed its Response and I have given National until January 21, 2011 to locate counsel and file a Response to the Claim.

There are no surprises in the two Response filed to date. The Wall Group's defence can be summarized as follows:

- a. the IGU Deficiencies do not result in a substantial danger to the health and safety of the building's occupants (a requirement to make out a claim in negligence) and at best the damage suffered by the owners constitutes pure economic loss and thus, not recoverable as a matter of law
- b. there are no HVAC deficiencies;
- c. the windows need not be replaced to address the IGU Deficiencies;
- d. the window replacement program constitutes betterment; and
- e. the Disclosure Statements were accurate as issued (and do not contain omissions or misrepresentations around material facts).

ING's primary defence is that no notice of the Claim was provided within the appropriate timelines set out in Warranty certificates and the IGU Deficiencies are not otherwise caught by the Warranties.

Case Planning Conference

Under the new Rules of Court a party to a proceeding may request a case planning conference. The purpose of the conference is to establish timelines leading up to trial including dates that certain tasks must be completed by, including:



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- a. discovery of documents;
- b. examinations for discovery;
- c. production of expert reports; and
- d. circulation of witness lists.

We anticipate a CPC occurring in early February, 2011.

Discovery of Documents

Each party of record within 35 days after the end of the pleading period, must prepare a list of documents that lists all documents that are or have been in the party's possession or control and that could, if available, be used by any party of record at trial to prove or disapprove a material fact. Ascent is currently in the process of compiling the strata corporation's documents. Once we are in receipt of the documents, we will forward them to a data management company to scan and code the documents and prepare a list consistent with our obligations under the Rules of Court. In our experience, working from an electronic database saves the client considerable legal fees as the initial upfront costs of creating the database is more than offset by a reduction in legal fees in working with the electronic documents.

Trial Date

We anticipate setting a trial for the latter part of 2012. Those dates can only be confirmed once the Registry opens up those time slots (18 months prior to the desired start date).

Mediation

The vast majority of disputed claims settle prior to a trial on the issues. More often than not, settlement is achieved with the assistance of a mediator. Attendance at a mediation session is mandatory. We see no reason why mediation should not be pursued in this case. Subject the strata corporation's approval, we will take steps to serve a Notice to Mediate and have a mediator appointed. A mediation session should not occur until there has been discovery of the parties. To that end, we should be looking to late 2011 or early 2012 to convene a mediation session.