

From: "Tim Peters"
Subject: One Wall Centre
Date: Fri, March 11, 2011 10:51 am

Bruce, sorry for the late response. I was away from the office. There is not much to report on the litigation side since my last reporting letter but there have been a couple of minor developments:

1. RDH has been trying to track down the original wind tunnel report to complete its specifications and drawings. We were able to locate those through the developer. They are currently being copied and will be forwarded to RDH in due course.
2. Ascent provided me with the strata corporations files dating back to the inception of the strata corporation. I have vetted those documents for relevance and have sent them out for scanning and coding by a third party. That exercise should complete by Monday or Tuesday of next week. We have not yet received Lists of Documents from any of the defendants. However, I've been reluctant to push them until we have complied with our own discovery obligations. That said, I have reached an agreement with Wall's counsel to exchange electronic lists and documents which will assist in keeping costs down. I am told that Wall's scanning and coding is nearing completion as well.
3. National has finally appointed counsel. They have asked for two extensions to file their Response to our Action. The last extension expires today. I advised counsel that there will be no further extensions.
4. As you know, the application to City Hall had come to a grinding halt. Apparently the architect retained by Wall, Mr. Milkovich, wanted confirmation that he would get paid (and by whom). Wall seemed reluctant to commit to funding. Upon further inquiry I learned that Wall's counsel (appointed by its insurer) was concerned that by instructing Mr. Milkovich (and possibly attaching its name to an application to City Hall) the insurer may be seen as endorsing a fix that constitutes betterment and ultimately, exposing the insurer(s) to greater costs. That concern apparently stems from the perception that the use of tinted windows comes at a cost premium.
5. The strata corporation understands from RDH that there is no (or negligible) difference in price between clear and tinted glass. Leaving aside the question of whether tinted windows constitutes "betterment" for another day, I suggested to Wall's counsel that we move forward on a without prejudice basis. In other words, the strata corporation will not argue that the Wall defendants are estopped from arguing betterment (because it "participated" in the application to City Hall) and the strata corporation is free to argue that any additional costs associated with tinted windows (over clear) ought to be borne by the defendants. The strata corporation agrees it will not lead evidence at trial on Wall's involvement in the variance permit application (whatever involvement that is). The proposal was acceptable to Wall. It is my understanding that things are now moving forward.

I believe that is all that I have to report. Perhaps someone can send me the minutes of today's meeting.

Tim