

CONDOMINIUM LAW UPDATE: NEW SCC DECISION CONFIRMS THE DUTY TO ACT HONESTLY IN CONTRACTS

by Emily Duncan and Rachel Fielding

In *C.M. Callow Inc. v Zollinger*, 2020 SCC 45, a decision released on December 18, 2020, the Supreme Court of Canada confirmed that parties to a contract must act in good faith and have a duty to act honestly, even when exercising a right of termination in a contract. Misleading a party with whom a party is in a contract with, even if the party is abiding by the strict terms of the contract, can constitute dishonesty and will attract damages for the other party.

The facts of the case dealt specifically with a group of condominium corporations ("**Baycrest**") who entered into a summer and winter maintenance contract with C.M Callow Inc. ("**Callow**"). The winter contract contained a provision for early termination by Baycrest upon 10 days' notice. In April 2013, Baycrest decided to terminate the winter contract, but did not provide Callow with notice until September. The delay was due to Baycrest's concern that the notice of termination would jeopardize Callow's work under the summer contract, which involved free services provided by Callow in the hopes that the contract would be renewed.

Callow sued Baycrest for breach of contract. They also sued the property manager and management company for inducing the breach. In the action, Callow sought damages for the opportunity that Callow lost when it did not bid on other contracts for the Winter 2013-2014, as it would have done if Baycrest had not misled it into believing that the winter agreement would not be prematurely terminated. The trial judge found in Callow's favour due to Baycrest's bad faith. The trial judge held that the organizing principle of good faith performance and the duty of honest performance were engaged and as such, awarded Callow over seventy thousand dollars in damages based on the profit that Callow would have made from performing the remaining period of the contract. On appeal, the Court of Appeal reversed the decision and the matter was ultimately appealed to the Supreme Court of Canada.

The Supreme Court of Canada reinstated the trial judge's decision which concluded that Baycrest acted in bad faith by withholding the fact that they intended to terminate the winter contract to ensure that Callow performed the summer contract, and as such, continued to represent that the winter contract was not in danger of non-renewal.

The Supreme Court of Canada held that Baycrest did not have a free-standing obligation to disclose its intention to terminate, but it nonetheless had an obligation to refrain from misleading Callow in exercising the termination clause.

This decision is a reminder that sometimes parties need to look at factors outside of the written contract itself when considering the consequences of contract termination. Condominium corporations should seek legal advice when terminating any significant contracts. On a separate note, it is exciting that a case involving condominium corporations has made it to the Supreme Court of Canada, as this rarely happens.



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