Blaney McMurtry LLP

NEWS

Sheldon Inkol Successful at the Court of Appeal

Date: January 08, 2020

Blaney McMurtry partner Sheldon Inkol was successful in having a Statement of Claim dismissed via summary judgment in the matter of *Swan v. Durham Condominium Corporation No. 45*. The plaintiff – a unit owner in a residential condominium and a former member of the Board of Directors of the condo corporation – had a lengthy history of litigation with the corporation, and was seeking an order that he be fully indemnified for all of his legal expenses due to his status as a former director, as well as an order that a lien placed by the corporation on his unit pursuant to the *Condominium Act, 1998* be declared invalid. Sheldon successfully argued before Justice Nishikawa that the claim for indemnification was both *res judicata* and statute-barred as being out of time, and that the lien was valid and should not be vacated. The plaintiff appealed the dismissal of his action to the Court of Appeal. The Court of Appeal dismissed the appeal and upheld the motion judge's decision. The Court of Appeal specifically held that the claim for indemnification is a collateral attack on an earlier decision and therefore an abuse of process, and that there was no evidentiary basis to justify vacating the lien. Identifying the real issue as being the amount of the lien, the Court of Appeal importantly found that the condo corporation could recalculate the lien, discharge the current lien, and register the lien in a revised amount without losing any of its existing lien rights.

Click here to read the Court of Appeal decision. Click here to read the Ontario Superior Court decision.

PEOPLE

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PRACTICES

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