

## ARBITRATION DECISION APPLIES COMMON SENSE, CONDOMINIUM ACT AND FUNDAMENTAL FAIRNESS TO DISTRIBUTION OF INSURANCE PROCEEDS

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In an unreported arbitration decision, former Land Court Judge Leon Lombardi decided that where a condominium has decided not to rebuild following a total loss, that insurance proceeds should be distributed to unit owners according to their percentage interests without taking into account or first using the proceeds to payoff existing mortgages on the units. MEEB's Stephen Marcus was initially involved in the case as a member of the arbitration panel, but the parties decided that Judge Lombardi was more than capable to make the decision on his own.

The decision, while not binding, precedent may be useful as it is the first known case or opinion interpreting how to distribute insurance proceeds when a condominium decides not to rebuild. In this particular case, a 6-unit condominium was totally destroyed by a fire. The unit owners, each of whom had an identical 16.66 percentage interest in the common areas, decided not to rebuild the Condominium after a devastating fire. Over \$1 Million Dollars in insurance proceeds was distributed to the Condominium Trust, for eventual distribution to the unit owners. However, the Condominium Trust proposed to first use the insurance proceeds to pay off all of the existing mortgages on all of the existing units, before distributing any proceeds. Some unit owners objected, contending that the proceeds should first be divided into 6 shares, with each unit's mortgage being paid out of their own 1/6<sup>th</sup> share, the argument being that otherwise, the unit owners who had lower mortgages or obligations on their units, would be subsidizing those who had higher mortgages, which would be patently unfair. The Trust argued that some unit owners had mortgages on their units, which had riders providing that in the event of a casualty any excess insurance proceeds were to be used to satisfy the mortgage obligation.

Judge Lombardi refused to give the Condominium Trustees the bailout they were looking for, holding that the proceeds would be divided into 1/6 shares and each unit owner's obligations would be paid out of their own 1/6<sup>th</sup> share and each unit owner would then receive net proceeds based on their own obligations. In addition to relying on fundamental fairness and common sense, Judge Lombardi relied on two sections of the Condominium Act. First he relied on Section 6(a)(iii) which provides that "common profits shall be distributed in the same manner as common expenses are charged to the unit owners", which of course is by percentage interest. Next Judge Lombardi relied on Section 17 of the Condominium Act, which talks in terms of a partition sale of a condominium following a casualty loss, being distributed according to percentage interest. Finally, Judge Lombardi rejected the argument for application of the language contained in some of the mortgages, holding that: "it is axiomatic that unit owners can only mortgage what they own"... "any responsible lender understands this basic principle of property law"... and "that each mortgage expressly or impliedly encumbered the unit and its 16.66% interest in the common areas and facilities"... and as a result cannot be entitled to anything beyond that.

A copy of the Decision can be obtained at the following link.

[Robert v. 149-159 Meadow Pond Condominium Trust]