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Just what do timeshare owners actually own

Court rules owners had no right to the land
No 10-day cooling off-period for Ontario buyers

One of the reasons I've never been enthusiastic about the timeshare concept of resort "ownership" is illustrated by a recently published decision of the Superior Court of Justice. It demonstrates quite vividly how precarious the position of the participants is if the operator has financial problems.

The property, which was the subject of the court case is the Northridge Inn. It is a luxurious resort facility situated on 3.5 hectares of land fronting on Lake Bernard in Sundridge, north of Huntsville.

Western Hemlock Ltd. (Hemlock) operated the resort and its restaurant, and sold timeshare units for vacations. Each timeshare purchaser signed a standard form 40-year Vacation Lease, which entitled the owner to the use of a unit during a fixed week of the year, or a floating week on a first-come first-served basis.

The purchase price of the contract represented prepaid rent for a period of 40 years, along with accompanying services such as maintenance, repairs, housekeeping, linens, and the availability of meals, beverages and room service.

In its marketing materials, and in the lease documents, Hemlock stated that the development was structured so that the members' leases would have priority over all existing or future mortgages on the property.

As bad luck would have it, Hemlock's business failed, and the company filed for bankruptcy.

Its largest unsecured creditor, at more than \$2.5 million, was Sittuk Investments Ltd. It was owned by John Kuttis, who was also the sole principal of Hemlock.

The question the court had to decide was whether the timeshare owners could make a claim against the land or whether they were restricted to pursuing only the bankrupt company.

If the company's claim was allowed on an equal footing with the timeshare owners, Sittuk would receive about 90 per cent of the value of the property, and the owners would share only about 10 per cent of the proceeds.

The owners wanted priority over Sittuk's unsecured interest because they claimed an interest in the land itself.

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Sittuk's position was that the rights of the timeshare owners were like those of vehicle owners in a parking lot. The right to use a parking lot upon payment of the fee is a licence which can be terminated, and does not grant any rights to the land underneath the lot.

In his ruling last fall, Justice James Spence decided that the timeshare owners had no rights to the land itself, which could be sold free and clear of the timeshare leases.

This does not mean that every timeshare owner in other projects is in the same position, since the laws of each jurisdiction and the governing contracts of each resort are different.

But the Sittuk case does raise the question of exactly what all timeshare owners have acquired in their resorts a right to the land, or a personal right against the operator only.

In his decision, Justice Spence looked closely at the marketing materials and weighed the fact that Sittuk advanced money to Hemlock knowing the company was in trouble.

On these facts, the judge decided that it would be unconscionable to allow the related company to have priority over the timeshare contracts.

Although the property could be sold free of claims from the timeshare owners, their claims would have priority over Sittuk's when the proceeds were distributed.

If you have a timeshare contract, or are considering buying one, you might look carefully at the financial stability of the operator, and what would happen in the event of a bankruptcy. Who would get priority over the resort's assets? The bank, the operator, or the timeshare owners?

Today, the new owners of the Northridge Inn & Resort are Michael, Brenda and Adrian Piraino. The property, which appears on the Web site (<http://www.northridgeinn.com>) to be a very attractive holiday destination, is no longer a timeshare, the owners said.

If you're going to buy a timeshare, remember that the new Consumer Protection Act 2002 is not in force yet, and there is still no 10-day cooling-off period for timeshare contracts signed in the province of Ontario.

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