



**Recent Case Update - *Lotusland Estates Ltd.. v. Ali* 2002
BCSC 131 (Supreme Court of British Columbia, February 1,
2002) Taylor J.**

Dirk Laudan
June 18, 2002

Property owners (the “Alis”) retained a contractor (“Lotusland”) to construct a residence. That residence included a suite designed for rental. Under applicable municipal zoning, such a suite was unauthorized: an “illegal suite”. After completion, dispute arose between Lotusland and the Alis relating to amounts owing.

At trial, the Alis contended that the construction contract was void for illegality, and therefore unenforceable by either party. The Court rejected that argument.

In considering the doctrine of illegality of contracts, the court applied the reasoning of the Federal Court of Appeal in *Still v. M.N.R.* [1998] 1 F.C. 549. To determine the affect of statutory illegality on the enforceability of a contract, the court must consider the relative merits of the parties, the purpose of the statute, the policy upon which it is founded, whether the statute contains the consequences of the illegality, and whether voiding of the agreement results in a *de facto* penalty that is disproportionate to the breach itself.

Taylor J. noted that the illegality, in this case, was not in the construction of the suite, but only in its subsequent use. Performance of the contract was not, in itself, contrary to statute. Furthermore, both parties were aware of the illegality, such as it was. The court held that the Alis could not hide behind the assertion of illegality, when they instituted, and directly benefited from, the illegal use.