

2012 CarswellOnt 77, 2012 ONSC 161

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Durham Standard Condominium Corp. No. 187 v. Morton

Durham Standard Condominium Corporation No. 187, Applicant and James A. Morton, Defendant

Ontario Superior Court of Justice

B.A. Glass J.

Heard: January 5, 2012  
Judgment: January 5, 2012  
Docket: 75089/11

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Counsel: E.K. Chan, for Applicant

No one for James A. Morton

Subject: Property

Real property.

***B.A. Glass J.:***

**Introduction**

- 1 The Applicant is a non-profit condominium corporation in the City of Oshawa, in the Regional Municipality of Durham and Province of Ontario.
- 2 The Respondent is the owner and resident of unit 302 of the condominium.
- 3 Section 117 of the Condominium Act, 1998 (Ontario) provides that no one is to allow a condition to exist or an activity to be in place either in a unit or in the common elements if it is likely to damage the property or cause injury to a person.

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4 The by-laws of the Applicant provide that residents can have 1 pet only. The pet cannot weigh more than 20 kilograms. The pet must be on leash at all times. The board of directors for the condominium corporation has the responsibility to determine whether there has been a breach of the by-laws.

5 The application claims that the Respondent has 2 dogs weighing more than 20 kilograms each. Further, the application states that Respondent allows the dogs to run off-leash and at times they have jumped up at people causing them to be afraid and to file complaints with the condominium board of directors. The application requests an order for the removal of the dogs from the condominium property. The Applicant provided notice to the Respondent with respect to these alleged infractions. The Respondent did nothing about the situations.

6 The Respondent challenges whether there is proof of his dogs being off-leash. He states that there is no proof of the weight of the dogs. He claims that many residents break by-law provisions including some members of the board of directors. He submits that there should be enforcement of the by-laws for those persons as well.

### **Issues**

7 Does the Respondent have 2 dogs?

8 Do the dogs weigh more than 20 kilograms?

9 Does the Respondent permit the dogs to run loose on the condominium property?

10 Has notice been given to the Respondent about breaches of the by-laws?

11 If there are infractions of by-laws by others, does such a circumstance affect this application?

12 What is the remedy if there is an infraction?

### **Analysis**

13 The materials filed by both sides confirm that the Respondent has 2 dogs. The by-laws provide that the Respondent is limited to 1 pet.

14 The photographs of the dogs along with the affidavits indicate that the dogs are more than 20 kilograms in weight.

15 The affidavit evidence indicates that the Respondent permits the dogs to be off-leash even after being given notice. During submissions, the Respondent admitted to allowing the dogs off their leashes but that it was done in an enclosed area.

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16 Mr. Morton complained about other persons breaching the by-laws. The Applicant filed a responding affidavit acknowledging some infractions such as contractors stopping in fire route areas when doing work near their vehicles. They would be able to move their vehicles if need be.

17 The responding affidavit of the manager of the condominium property acknowledged allowing unit owners with full balconies to clamp items to their railings. The affidavit by Mr. Schwiering, who is the property manager for the condominium corporation, acknowledged that he is aware of other owners and residents with more than 1 pet. However, he noted that there has only been complaining about Mr. Morton's dogs.

18 Mr. Morton submitted that the dispute should have been put to mediation or arbitration; however, I accept Mr. Chan's submission that the issues here involve the Act rather than a dispute over an agreement between parties. Section 132 of the Condominium Act covers mediation and arbitration.

19 Section 134 of the Act provides for an application to the Superior Court of Justice to enforce provisions of the Act, the declaration, the by-laws, the rules.

20 The board of directors for the condominium corporation here passed a resolution finding that Mr. Morton has been in breach of the by-laws regarding pets and that the violation is likely to cause injury to people. The documentation filed outlines that there have been occasions when Mr. Morton's dogs have jumped up at people thereby frightening them. The potential to knock over a person is an example of a likelihood to cause injury.

21 Notice to comply has been given to Mr. Morton and he has continued to have 2 dogs. He commenced leashing the dogs after an order from the court was made previously.

22 Mr. Morton filed many materials pointing the finger at others with a submission that the board of directors was isolating him.

23 The issue of selective enforcement is a valid issue to consider; however, the standard of review of the decision of the board by the court is not whether or not the court would have made a different decision. Rather, the reviewing court considers the reasonableness of the decision of the board as well as whether it was a decision reached capriciously against Mr. Morton. See *York Condominium Corporation No. 26 v. Daniela Ramadani*, 2011 ONSC 6726 at paragraph 45.

24 In [\*Peel Condominium Corporation No. 108 v. Donna Young\*, 2011 ONSC 1786](#), the issue of promissory estoppel arose because of inaction by the board with other infractions. The alternative argument was that selective enforcement made for an unfair enforcement against the unit holder there. In that case, Gray J. found no promissory estoppel because the evidence did not show that the condominium corporation represented a situation upon which the unit holder relied. The application judge dealt with the issue as one of selective enforcement which did not exist. The

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application judge determined that selective enforcement considers fairness to both sides with the court balancing competing interests. Gray J. found that although there was some degree of selective enforcement in the Young case, it did not amount to rampant non-enforcement. The application judge compared the situation to ones in which municipalities try to enforce by-laws.

25 Reference to [\*City of Toronto v. Polai\*, \[1970\] 1 O.R. 483 \(C.A.\)](#) was made by Gray J. in the Young case. Two of the three judges of the Ontario Court of Appeal in Polai found that the circumstances revealed discriminatory enforcement of a municipal by-law but that the public interest in the enforcement of the by-law should prevail over the private interests of one who flouted the by-law. In other words, the interests of the whole took precedence over a single person. In Polai, the issue had been the use of a building as a multi-family dwelling in an area not zoned for such use. There had been such uses for many years without enforcement proceedings being taken.

26 The materials filed by the Applicant here reveal that the condominium corporation appears to be acting as many municipalities do with their by-laws. That is, they act reactively rather than proactively. With respect to the Durham Standard Condominium Corporation, the board has only had complaints about Mr. Morton and his dogs.

27 I am satisfied that the board has not acted vindictively or selectively against Mr. Morton with respect to his dogs. The board has received complaints from people who express fear of Mr. Morton's dogs jumping up towards them. There is a potential danger of injury to others.

28 There is no action by the Applicant leading to promissory estoppel. Mr. Morton has simply ignored the by-laws and ignored requests to comply. In hindsight, he notes the actions of others, but there is no indication that the Applicant has done any act to draw him into his course of action.

29 Nor do I find that the Applicant has conducted itself either in a vendetta towards Mr. Morton or selectively against him without cause. Rather, the Applicant has complaints about the actions of Mr. Morton's dogs. Concern about potential injury to others exists.

### **Conclusion**

30 There will be an order that Mr. Morton remove his two dogs permanently from the Applicant's premises within 10 days.

31 Barring there being offers to settle, costs should go to the successful party. Costs may be addressed orally today.

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**KEYCITE**

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**History**

**Direct History**

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