

ONTARIO
SUPERIOR COURT OF JUSTICE
(East Region)

B E T W E E N :

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**FRONTENAC CONDOMINIUM
CORPORATION No. 49**

Applicant

- and -

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**BRUCE McLEOD, ELIZABETH McLEOD
and THEDA MARGARET KERR**

Respondents

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**DECISION
ON
APPLICATION**

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By the Honourable Madam Justice H.K. MacLeod
on the 19th day of August, 2004
at KINGSTON, Ontario

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APPEARANCES:

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J. Davidson, Esq.

Counsel for the applicant

Mr. B. McLeod

Representing the respondents

THURSDAY 19 AUGUST 2004

D E C I S I O N

5 **MacLEOD, J:** (orally)

This is an application by Frontenac Condominium Corporation No. 49, as applicants, and Bruce McLeod, Elizabeth McLeod and Theda Margaret Kerr, as respondents. The respondents are the owners of a condominium unit within the condominium corporation: Unit 410, 566 Armstrong Road, in the City of Kingston, County of Frontenac.

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15 This application is properly brought under the *Condominium Act* for an order requiring the respondents to comply, and allow the condominium corporation, No. 49, to carry out an upgrade to the fire-alarm system.

20 The applicant's position is that they retained the services of "401 Fire and Safety" to perform annual maintenance with respect to the fire-alarm system of the Frontenac Condominium Corporation at these locations. As part of the services, they did their annual fire inspection in November of 2003. As a result of those inspections, 401 Fire and Safety advised that the audibility of the fire-alarm system, within the individual units in the condominium corporation, was inadequate.

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30 That review, I am satisfied, was conducted using acceptable practices in testing both areas and units in the building that were closest to

(THE COURT - continued)...

5 the fire bells in the hallways, and farthest
away. It is of note that not even the units
that were next-door to the fire bells met the *de*
minimis regulations for audibility, and
particularly the guidelines that were set out by
the Fire Marshall's Office and in the *Ontario*
Building Code for acceptable levels for fire-
alarm systems.

10 The results from "401" were copied, in a
formal way, to the condominium corporation, and
were also copied to the Ontario Fire Marshall's
Office, as is their responsibility to do, when
15 they find such a serious defect affecting the
lives and endangering the occupants of a
residential building.

20 The units have all been upgraded, save and
except the unit before the court, which is Unit
410 at 566 Armstrong Road. In addition, I have
material before me that, because of the lack of
co-operation of the owners of Unit 410, a unit
below them, Unit 110, has been affected by the
fact that Unit 410 has not complied with the
25 request to upgrade pursuant to the regulations.
The unit holder in 110 therefore has wires
outstanding in the hallway, and has been left
with an unsightly upgrade - which, of course, she
has vehemently complained about. She was
30 distressed. There is evidence before me that
the wires are outside the drywall, and there are
cables running from the horn to the left of her
intercom, travelling down the hall. The

(THE COURT - continued)...

condominium corporation is unable to complete this work, because of the electrical stack requirements that must be done through Unit 410.

5 The respondents' position is that they, personally, are able to hear the fire bells from their unit. Their position, also, is that there is a mandatory mediation requirement that is applicable in this case, which has not been
10 complied with by the condominium corporation.

I am aware that, with these types of applications, the arbitration and negotiation and medication provisions of the *Condominium Act* specifically do not apply. This is not a matter
15 of choice by the condominium corporation, as they are required - not only by the Fire Marshall's Office but the *Ontario Building Code* - to ensure a *de minimis* level of fire safety within their
20 building. This affects the rights of not only individual condominium-unit owners, but everyone who not only resides in the building but also members of the public who may visit there or stay there for a period of time.

I am satisfied that there is a clear
25 misconception on the part of the respondents in understanding their legal rights and obligations within the condominium, and that this is not a matter of choice. When you own a condominium, you must submit to the decisions of the
30 condominium corporation, *vis-à-vis* fire-code regulations, whether or not you personally agree or disagree with them. It is one of the rights

(THE COURT - continued)...

that you must concede, to be living within the building.

5 It is also not reasonable to make a subjective test. Whether or not you, as respondents, can hear the bells is not the issue. The issue is whether, on an objective basis, any person would be able to hear, within the acceptable decibel ranges. To convince the court, when every other unit of the building does not comply, that yours would somehow be special, is not reasonable. There is no reason, that I can see, based on the facts and on the law in this case, that the order should not issue.

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15 As a result, there will be an order that Frontenac Condominium Corporation No. 49 be granted access to Unit 410, 566 Armstrong Road, for the purpose of carrying out upgrades which are required to address deficiencies with respect to the audibility of the fire-alarm system - specifically to install a fire horn that meets the requirements of being outside no more than the one door between it and the bedroom door.

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25 I do wish, because of the situation here, to specify a time. I think 24-hour access to the unit would be unreasonable, so I would say between the hours of 9:00 and 5:00 that the access should be permitted.

30 I will endorse the record: order to go as asked in paragraph (1) of the application, as amended, to be between the hours of 9:00 a.m. and 5:00 p.m., Monday to Friday, until the work is

(THE COURT - continued)...
completed.

5 I do also say, as a matter of caution to the
respondents, that failure to comply with the
order can result in what I have seen before, in
this court: the ability of the condominium
corporation to take further action, by way of
fining. I have actually had them come on a
10 daily basis, which will significantly affect your
financial position - because the corporation does
have the ability to exercise some very serious
remedies, for lack of compliance, as does the
court. This is now a court order, so failure to
15 comply can be and would be considered contempt of
court.

.....SUBMISSIONS by MR. DAVIDSON re costs
.....SUBMISSIONS by MR. McLEOD re costs

20 **THE COURT:** The law is very clear, on an
application such as this, and based on the
material I have read, the order was one that
legally did not have any significant defence that
could be raised against it. The law is also
25 clear, as Mr. Davidson said, for condominium
individual-unit holders who choose to force a
court application; you always take the risk of
court costs. And, in fairness to the other
condominium owners, any award less than the full
30 amount of the legal expenses of the corporation
would be unreasonable - for the balance of the
unit holders to have to pay, through their

(THE COURT - continued)...
management expenses, common expense charges for
legal fees caused by one individual unit holder.
The request is reasonable.

5 I have made the following complete
endorsement: order to go as asked in paragraph
(1) of application, as amended, to be between the
hours of 9:00 a.m. and 5:00 p.m., Monday to
Friday, until the work is completed.

10 So, that means the condominium management
has the right to enter, to install the horn,
between 9:00 and 5:00, Monday and Friday, for as
long as it takes to get it done.

15 Approval of the order is dispensed with.
Costs to the applicant fixed at \$5,712.84,
payable by the respondents forthwith.

That is my decision. Thank you.

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Certificate of Transcript
Evidence Act, ss. 3(2)

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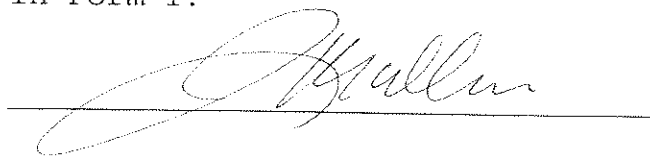
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I, Jodi Mullen, certify that this document is a true and accurate transcript of the recording of: **Frontenac Condominium v McLeod et al** heard in the Superior Court of Justice, held at 5 Court Street, Kingston, taken from recording no: 209/04, which has been certified in Form 1.



Certified: 03 September 2004