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Case Name:
**Graham v. Shannon Estates Villas Condominium Corp.
No. 001 2442**

**IN THE MATTER OF the Condominium Property Act
Between
Robert Errol Graham, Applicant (Plaintiff), and
Shannon Estates Villas Condominium Corporation
No. 001 2442, Respondent (Defendant)**

[2007] A.J. No. 367

2007 ABQB 206

Docket No. 0601 14026

Alberta Court of Queen's Bench
Judicial District of Calgary

Chrumka J.

Heard: January 19, 2007.
Judgment: March 27, 2007.

(24 paras.)

Counsel

Appearances:

Robert Errol Graham, Applicant (Plaintiff) - Self-Represented.
R. Craig Steele, Thackray Burgess for the Respondent (Defendant).

MEMORANDUM OF DECISION

1 **CHRUMKA J.:**-- The issue to be addressed is should the Applicant be bound by a policy put in place after he received a Court Order.

2 Robert Errol Graham Applicant (Plaintiff) filed an Originating Notice of Motion on August 3rd, 2006, Action No. 0601 09186, claiming:

(a) It is my belief that I have been discriminated/prejudiced against by the SHANNON ESTATES VILLAS CONDOMINIUM CORPORATION 001 2442 in that I have been refused the installation of a stairway from my rear deck to the ground level below. I would ask that Court to grant a judgment that would enable me to install a stairway from my rear deck to the ground level below utilizing the same materials that have been used to construct 100% of the decks in the Shannon Estates Villas Condominium Complex."

3 The Applicant submitted that the request for a stairway was made in order to provide himself with a safety exit from his residence in the event that he was unable to use the front entrance to escape if safety concerns arose.

4 The Applicant stated that the condominium complex has 16 units with a rear door/deck to the ground stairway, 65 units with a rear walkout basement and the remaining units with only a rear deck. This totals 134 units in the complex.

5 Additionally, the Applicant stated that, as his deck surface to the ground level is approximately 1.5 metres and the railing surrounding the deck is 1.1 metres in height, escape therefrom would result in a fall/jump to the ground of about 2.6 metres.

6 The Applicant alleges that he has requested permission to install the stairway on three separate occasions, namely, April 12th, 2006, May 16th, 2006 and July 10th, 2006. The Applicant states that the Condominium Board refused approval in each instance.

7 The Applicant filed an Affidavit sworn to on the 3rd day of August, 2006 in support of his application.

8 In reply to the application, Julian Yaniw, the current president of the Respondent, swore and filed an Affidavit on the 17th of August, 2006. Mr. Yaniw, deposed:

5. Contrary to Mr. Graham's assertions in his correspondence dated April 14, 2006 respecting the number of condominium units which have rear stairways, I confirm that only twelve condominium units have rear stairways installed. Out of those units which have rear stairways, four units have no deck and the stairways extend only from the rear door of the unit to the cement patio at ground level. All twelve rear stairways were installed by the developer at the time the units were constructed and despite requests from other unit owners, the Board of Directors has never given its approval for the installation of a rear stairway.

9 Mr. Yaniw further deposes that the lack of a rear stairway does not pose any real safety concern as safety requirements would have been met when the condominium was built.

10 Mr. Graham's application was heard by Mr. Justice A.D. Macleod, in Chambers, on the 22nd of August, 2006. Mr. Justice Macleod ordered that:

"1. Subject to #2. below, the SHANNON ESTATES VILLAS CONDOMINIUM CORPORATION NO. 001 2442 grant ROBERT ERROL GRAHAM the right to install a stairway from the rear deck to the ground level below at the Plaintiff's address. The stairway will comply with the City of Calgary approval, utilize the same materials that have been used to construct 100% of the decks and 75% of the existing stairways within the SHANNON ESTATES VILLAS COMPLEX. The railing will comply with the SHANNON ESTATES VILLAS CONDOMINIUM CORPORATION NO. 110 2442 ACCEPTED POLICIES, PROCEDURES, RULES AND REGULATIONS (A)(6) dated March 26, 2005.

2. Prior to construction of the staircase referenced to in item #1, the Plaintiff is required to submit a drawing or plan depicting the stair construction and identify the

materials to be used to the Board of the Respondent corporation for their approval, which is not to be unreasonably withheld.

3. The Plaintiff is entitled to \$200.00 in court costs."

11 This Order was filed on September 20th, 2006. No appeal has been taken from the Order.

12 Mr. Graham obtained a building permit, Permit No. BP2006-19486, from the City of Calgary, Development and Building Approvals, dated Nov 21, 2006 with respect to his property, 48 Shannon Estates TC SW. Attached to the permit is the "STAIRWAY PROPOSAL" drawn to scale, which is stamped as being examined by Mario Stamile, Safety Codes Officer.

13 In his Affidavit, sworn on December 11, 2006, Mr. Graham deposed that, following the granting of the Order by Mr. Justice MacLeod, he made two further applications to the Condominium Board for approval to install the stairway but each time, approval was not granted. These requests, he deposes, were made on August 24th, 2006 and November 21st, 2006.

14 In a letter, dated November 21, 2006, and addressed to the attention of Mr. Julian Yaniw, President, Robert Graham wrote:

"Attached please find a Building Permit granted by the City of Calgary on November 21, 2006 to add stairs to an existing deck.

As well please find an updated Shannon Estates Villas Condominium Corporation No. 001 2442 Request and Undertaking form (includes stair drawing) approved by my closest condominium neighbors including both current and previous owners."

15 The application was refused by the Board. In a letter, dated December 6, 2006, Mr. Yaniw writes:

"Further to your letter of November 21, 2006 and attached building permit, as advised in our letter of November 6, 2006 your undertaking does not conform to our newly constructed stair policy. The main issue is that newly constructed stairs must be attached directly to the existing deck and be parallel to the Owner's unit."

16 On December 11th, 2006 Robert Errol Graham filed a second Originating Notice of Motion, this is Action No. 0601 14026 against Shannon Estates Villas Condominium Corporation No. 001 2442. He again made a request for authority to build a stairway from his deck to the ground. In support of his application he filed an Affidavit sworn on the 11th of December, 2006. Attached to the Affidavit are three exhibits, namely, Exhibit "A", the Order of Mr. Justice A.D. Macleod, Exhibit "B" the City of Calgary building permit BP2006-19486 and a Stairway Proposal, and Exhibit "C", the Condominium Board of Directors' NEWLY CONSTRUCTED STAIR POLICY dated October 30, 2006.

17 In reply to the application Julian Yaniw swore an Affidavit, dated December 18th, 2006, in which he deposes, in part, that as a result of Mr. Graham's application and the resulting Order of Mr. Justice Macleod, the Board approved a policy for newly constructed stairways. He deposed further that the Board spent a significant amount of time drafting the Policy and obtained input from all owners. He continued:

"The Policy was intended to ensure high-quality construction standards, consistency with other stairways in the complex and the overall aesthetics of the condominium complex."

18 In paragraph 7 of the Affidavit, Mr. Yaniw deposes:

"Upon reviewing the Order and upon advice from our counsel, Mr. R. Craig Steele, I do verily believe that the terms of the Order do not require the Board to grant approval where it would be unreasonable to do so. I do verily believe that it is not unreasonable to require that all Requests and Undertakings for new stairways adhere to the Policy and therefore that it is reasonable to withhold approval where the terms of the Policy are not met. Attached hereto and marked as Exhibit "F" are copies of photographs of the vast majority of stairways currently in existence. It should be noted that the Policy was created to achieve aesthetic consistency of stairways throughout the complex. The applicant in this proceed-

ing is not only seeking to build stairs but to build an addition to his deck, which is inconsistent with the vast majority of stairways that are currently in place."

19 Mr. Graham's application, his Originating Notice of Motion filed on December 11, 2006 was heard by me on January 19, 2007. Mr. Graham was self-represented. The Respondent was represented by R. Craig Steele, Esq. At the hearing Mr. Graham provided the Court with eighteen coloured photographs depicting the various stairways, decks and back entrances of the condominium complex in the area in which his condominium and deck are located. His deck is depicted in photograph #2 and #17. There are 16 units with a rear door-to-ground stairway in the area of his unit. Mr. Graham proposed to attach a stairway to his deck as per the plan. This is in an area which already has numerous decks and stairways. It is not in an area which has no decks or just a few decks. The proposed stairway is very similar to that depicted in at least two other photographs.

20 The *Condominium Property Act*, R.S.A. 2000 Chapter C-22, Appendix I (Section 33) Duties of Owner provides:

To an owner;

- (e) shall not make structural, mechanical or electrical alterations to the owner's unit or to the common property without the prior written consent of the board, which must not be unreasonably withheld.

21 Mr. Graham submitted nine reasons why he felt the Condominium Board unreasonably withheld approval. Firstly, Mr. Graham submits that he is being discriminated against as other owners have done exactly what he is requesting. Secondly, he submits that the Board is placing an unreasonable financial burden upon him in insisting that he use a licenced and bonded contractor to construct and install the stairs. He states he received a permit from the City of Calgary permitting him to install the stairs himself. He submits that after installation, a licenced inspector would inspect the stairs and determine whether the stairs met the Alberta Building Code. Thirdly, he submits that the Condominium Board, in their Newly Constructed Stair Policy, is insisting that he construct and install a set of stairs that would not comply with the Alberta Building Code. This deals with the requirement of 7 inch risers as set out in the fifth sentence of the Policy. Fourthly, Mr. Graham submits that it is unreasonable to say that the stairs must be attached directly to the deck. Fifthly, he submits that, in the most recent refusal, the Condominium Board said that his planned stairs would not be parallel to his unit. He submits that his proposed stairs would be parallel to the side of the unit and his proposed stairs, being located in the same area as other stairs, would be aesthetically pleasing. Sixthly, he submits that another unreasonable burden being placed upon him is the insistence that the stairs, as specified in the Newly Constructed Stair Policy, "... come on to a cement pad on a cement pylon below the frost line." His next two submissions, with respect to unreasonable requirements, concerned other aspects of the support required for the stairs. Lastly, Mr. Graham submitted that it is unreasonable that the stair railings would have to be mounted to the cement base.

22 Prior to and on August 22, 2006, there was no policy in effect or in force with respect to the construction of stairs from decks in the Condominium Complex. The Newly Constructed Stair Policy came into effect in October, 2006, approximately two months after the Order of Mr. Justice Macleod. It is unreasonable to insist that Mr. Graham comply with this Policy. The Order of Mr. Justice Macleod was made on the Affidavit evidence before him at the time and the submissions of the parties. The only policy at the time, according to the Affidavit of Mr. Yaniw, was that no approval was being given for the construction of stairs at the rear of the condominiums not that they had to comply with certain building standards. The Board of Directors is attempting to apply the Newly Constructed Stair Policy retroactively.

23 In this case there is the undertaking from Mr. Graham to build the stairway with the same material, in the same design, in a pattern similar with other existing rear stairs. His design is not a departure from what already exists as depicted in the photographs presented to me.

24 The reason given by the Board of Directors for denying approval, following the Order of Mr. Justice Macleod, and after receiving the plans and the City of Calgary building permit and the undertakings, in November 2006, was unreasonable. In the special circumstances of this case the Board of Directors has unreasonably withheld approval for the construction of the stairs as proposed by Mr. Graham and approved by the City of Calgary.

CHRUMKA J.

cp/e/q/pha