

IN THE SUPERIOR COURT OF JUSTICE

HALTON CONDOMINIUM CORPORATION No. 315

(Applicant)

-and-

SID GUCCIARDI and CATERINA GUCCIARDI

(Respondents)

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REASONS FOR JUDGMENT

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Delivered by The Honourable Mr. Justice P. Flynn  
on April 15, 2004  
at Hamilton, Ontario

APPEARANCES:

D. Schmuck

Counsel on behalf of the Applicant

D. Wands

Counsel on behalf of the Respondents

Reasons for Judgment  
Flynn J.

April 15, 2004

REASONS FOR JUDGMENT

FLYNN J.:

The facts here are not in dispute. After the Gucciardis moved into their condominium unit, the one that they purchased in 1997 from the declarant builder, they noticed some pockmarks and a footprint in the concrete on their front porch. They complained to the builder, but the builder did not repair the defect.

Three years later cracks appeared in the concrete of the porch.

Then in 2003, about five and a half years after they took possession, the Gucciardis decided to take on the repairs of the porch themselves.

According to the condominium's Declaration, the porch is part of the unit owned by the Gucciardis. In accordance with the Condominium Act, the Declaration puts the obligation of repair and maintenance upon the unit owners.

Mr. Gucciardi reviewed the condominium documents and decided for himself that he would repair the porch in accordance with what he saw to be his obligation and right under the Declaration. He did not seek the permission of the condominium's Board of Governors. He had contractors complete the work of covering the porch with ceramic

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tiles.

5 The condominium's property manager soon after told the Gucciardis that they had no right to do this. Mr. Gucciardi said that property manager conceded, however, that the tile job looked nice.

10 Other unit owners complained about the installation and two who sought permission to do the same thing to their porches were denied permission.

15 The Gucciardis knew they had to seek permission for some things and they did this in respect of fixing an awning or a satellite dish.

20 I have looked at the photographs of the porch in its completed and current state. I should say that like Mr. Mullen I find it looks nice, but that is not the test.

25 The Respondent urges upon me that this is a repair for which the unit owner is obligated and which is in no way prohibited by the Declaration for Halton Condominium Corporation No. 315.

30 Neither the Condominium Act nor the Declaration define "repair". So, I was led to Black's and Stroud's legal dictionaries. In sum, repair in Black's is defined as: "mending; remedying; restoring or renovating."

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In Stroud's to repair means: "to make good defects." It is pointed out in Stroud's that repair does not connote a total reconstruction.

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In my view, that is not what is at issue here. The Applicant says the work which was done by the Respondent violates or is in breach of the condominium's Declaration, and in particular, three sub-paragraphs of that Declaration.

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At Article 3.1(d) there is a prohibition. "No owner shall make any structural change, renovation, alteration or addition to his unit, or change affecting the common elements without the prior written consent of the Board and subject to the restrictions set out herein." And there are restrictions which are limited.

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There is also a procedure set out with respect to the consent that must be sought by the Board and the review by the Board of the plans and information for the purpose of the Board confirming in its sole and absolute discretion that the proposed change, renovation, alteration or addition will not do certain things.

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Now, of course, the review provisions of that article are completely moot in this case, because permission was neither sought nor granted. There was no opportunity for such a review.

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In Article 3.1(d) it is prohibited for porches to be removed or altered without the prior written consent of the Board.

In subparagraph (g) of the same Article: "No owner shall without the written consent of the Board change the exterior appearance of its unit."

That Article goes on to talk about certain particular textures or appearances or articles of decor, but the salient one is the one I have read out.

Now, it is clear in Article 3.1(d) that the key words are "structural change, renovation, alteration or addition".

It is common throughout these subparagraphs in Article 3.1 that prior written consent of the Board ought to be sought and it is common ground that that was not done here.

Renovation connotes a repair that makes new again, and clearly the work here is a renovation. It is also on a reading of the plain language an alteration to the unit. And, in fact, it is an addition to the unit, an addition to the materials which pre-existed it.

I need not make a ruling as to whether or not what was done here by the Gucciardis is a

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5 structural change. But, I do find that the work is a renovation, an alteration, an addition, and as such that work is forbidden without the prior written consent of the Board.

10 Condominium ownership is a form of ownership of land that is derived from old Roman law. Its distinguishing feature is that part of the ownership is unique and part communal, and the owners, indeed, form a corporation, a body corporate. They, like shareholders in any corporation, are bound by the corporation's Rules. Here the Declaration and By-law is the fundamental rule of this corporation. It is significant that unit owners understand that the name of the place as registered on title is Halton Condominium Corporation No. 315, and that the Declaration and By-law being the fundamental rule of the corporation must certainly be abided by all of the unit owners.

20 The unit owners have a right to change the Rules, but while they exist for the good of the commonwealth gathered on the same land, they must be obeyed.

25 I should briefly like to touch on a couple of the cases to which I was referred.

30 East Gate Estates Essex Condominium Corporation No. 2 v. Kimmerly, a decision of Cusinato J. of this court, [2003] O.J. No. 582, sets out in

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part what I have said about the corporate nature of the body politic here. There the corporation was composed of a Board of ten directors elected in accordance with the by-laws. That case is talking about beautification, in fact, of part of the common elements. At para. 12 what Cusinato J. says is this:

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*"Where the elected Board concludes it is unacceptable for an area of the common elements which they are elected to govern their word is final. In a democracy, the manner in which to overturn such a determination is through the election process and there is no evidence the condo Board ever rescinded their initial approval."*

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The Ontario Court of Appeal had something to say about that, as well, in the York Condominium Corp. No. 382 v. Dvorchik case, [1997] O.J. No. 378, the unanimous decision of the court:

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*"A board of directors of a condominium corporation derives its authority to make rules under s. 29 of the Condominium Act...The only limitation on the nature of these rules, is set out in s. 29(2) which states that the rules be 'reasonable' and 'consistent' with the Condominium Act."*

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In that particular case they were dealing with a pet restriction limited to size. It is called the "25 pound rule" there. The court looked at that rule to determine whether or not

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restricting the size of pets is either unreasonable or inconsistent with the Condominium Act and said it could not find it to be so. But, what is set out there that applies here is this - and this is regardless of the views of Mr. Mullen or myself, that the improvement, and it is an improvement, looks nice, or what the gab of the unit owners is with respect to this porch - the threshold for overturning a Board's rules reasonably made in the interest of unit owners is a high one and it had not been met in the York Condominium Corp. case.

That is the same thing here. What may look nice to me or to Mr. Mullen may not be what the Gucciardis' next door neighbour thinks looks nice, or what they want. The Board of Directors of this condominium was elected by the unit owners to administer this condominium in the best interests and for the welfare for the whole corporation. It is not for the court to step into this fray.

As a result, the Application of the Condominium Corporation is granted.

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Form 2

Certificate of Transcript  
Evidence Act, Subsection 5(2)

I, Linda Abbott, certify that this document is a true and accurate transcript of the recording of Halton Condominium Corporation No. 315 v. Sid Gucciardi et al in the Superior Court of Justice held at 45 Main Street East, Hamilton, Ontario taken from Recording(s) No. R-1-53/04, which has been certified in Form 1.

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Aug 23/04

(Date)

L. Abbott

Signature of Authorized Person(s)