

CITATION: Hogan v. Metropolitan Toronto Condominium Corporation No. 595, 2014 ONSC 3503

COURT FILE NO.: CV-14-2065-00

DATE: 20140620

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Jackie Hogan, Donald Davis and Carolyn
Koster

Applicants

– and –

Metropolitan Toronto Condominium
Corporation No. 595

Respondent

A. Casalnuovo, for the Applicants

T. Duggan, for the Respondent

HEARD: June 5, 2014

REASONS FOR JUDGMENT

DALEY J.

Factual Background

- [1] The applicants are unit owners and occupants within the respondent condominium corporation building (the “Corporation”).
- [2] The condominium is comprised of 227 residential dwelling units along with parking spaces and common elements and is municipally known as 131 Beechcroft Road, Toronto.
- [3] On November 13, 2013, the Corporation delivered a notice to the owners of the condominium dwelling units advising that the corporation intended on replacing the existing porcelain tiles in the elevator lobbies with new tiles at a proposed cost of \$72,000 excluding H.S.T. This notice advised the owners that they had a right to requisition a meeting of the owners within 30 days of receiving the notice pursuant to ss. 46 and 97 of the *Condominium Act*, 1998, S.O. 1998, c. 19 (the “Act”).

- [4] On November 15, 2013, the applicants Jackie Hogan (“Hogan”) and Donald Davis (“Davis”) advised the respondent’s management office personnel that they were seeking permission to distribute a requisition form to the condominium unit owners for the purpose of requisitioning a meeting in accordance with s. 46 of the *Act* which reads as follows:

Requisition for meeting

46. (1) A requisition for a meeting of owners may be made by those owners who at the time the board receives the requisition, own at least 15 per cent of the units, are listed in the record maintained by the corporation under subsection 47 (2) and are entitled to vote.

Form of requisition

(2) The requisition shall,

(a) be in writing and be signed by the requisitionists;

(b) state the nature of the business to be presented at the meeting;
and

(c) be delivered personally or by registered mail to the president or secretary of the board or deposited at the address for service of the corporation.

Same, removal of directors

(3) If the nature of the business to be presented at the meeting includes the removal of one or more of the directors, the requisition shall state, for each director who is proposed to be removed, the name of the director, the reasons for the removal and whether the director occupies a position on the board that under subsection 51 (6) is reserved for voting by owners of owner-occupied units.

Duty of board

(4) Upon receiving a requisition mentioned in subsection (1), the board shall,

(a) if the requisitionists so request in the requisition or consent in writing, add the business to be presented at the meeting to the agenda of items for the next annual general meeting; or

(b) otherwise call and hold a meeting of owners within 35 days.

Non-compliance

(5) If the board does not comply with subsection (4), a requisitionist may call a meeting of owners which shall be held within 45 days of the day on which the meeting is called.

Reimbursement of cost

(6) Upon request, the corporation shall reimburse a requisitionist who calls a meeting under subsection (5) for the reasonable costs incurred in calling the meeting.

- [5] Hogan and Davis prepared a requisition form calling for a meeting to be held so that the condominium unit owners could vote on the proposed replacement of the existing tiles in the elevator lobbies. The requisition forms were distributed to each of the condominium units in the Corporation. (*Appendix "A" – Requisition Form*).
- [6] 63 condominium unit owners executed the requisition forms as prepared by Hogan and Davis with their names, 19 of which were executed by indicating their names in cursive writing and 44 were executed by the writing of the owner's name in print.
- [7] A meeting of the Board of the Corporation was held on December 19, 2013, at which time the Corporation determined that the 63 requisition forms did not collectively comprise a valid requisition pursuant to s. 46 of the *Act* because only 19 of the owners signed their names by cursive writing which, in the Board's determination, was less than the 15 per cent requirement provided for in s. 46, although the applicants asserted that requisitions submitted far exceeded the 15 per cent required.
- [8] The solicitor for the Corporation, in his letter of opinion dated December 18, 2013, states that the 63 executed requisition forms were submitted to either the concierge desk or management office of the Corporation; however, the respondent was not aware of how many of the requisitions were submitted to the management office, as opposed to the concierge desk. The management office is the address for service of the Corporation.
- [9] As a result of the decision of the Board as to the validity of the requisitions submitted by the unit owners, the Corporation did not hold a meeting of the owners as required by s. 97(3) of the *Act* which reads as follows:

Changes made on notice

(3) A corporation may make an addition, alteration or improvement to the common elements, a change in the assets of the corporation or a change in a service that the corporation provides to the owners if,

(a) the corporation has sent a notice to the owners that,

(i) describes the proposed addition, alteration, improvement or change,

(ii) contains a statement of the estimated cost of the proposed addition, alteration, improvement or change indicating the manner in which the corporation proposes to pay the cost,

(iii) specifies that the owners have the right, in accordance with section 46 and within 30 days of receiving the notice, to requisition a meeting of owners, and

(iv) contains a copy of section 46 and this section; and

(b) one of the following conditions has been met:

1. The owners have not requisitioned a meeting in accordance with section 46 within 30 days of receiving a notice under clause (a).

2. The owners have requisitioned a meeting in accordance with section 46 within 30 days of receiving a notice under clause (a) but have not voted against the proposed addition, alteration, improvement or change at the meeting.

Position of the Parties

[10] It is common ground that the replacement of the existing tiles in the elevator lobbies constituted “an addition, alteration or improvement” to the common elements of the Corporation and as the proposed work was estimated to cost more than 1 per cent but less than 10 per cent of the condominium Corporation’s budget for the fiscal year, the provisions of s. 97 were engaged in this case.

[11] It is the Corporation’s position that the 63 requisition forms did not constitute a valid request for a meeting in accordance with the terms of s. 46 (2) in that the documentation submitted was in more than one document, namely in counterparts and as the requisition forms submitted were not “signed”.

[12] It is the applicants’ position that although the *Act* does not expressly state the form of the “requisition” as referred to in s. 46, the legislation should be construed liberally to meet its statutory objectives such that the 63 requisition forms should be considered collectively as the requisition required.

[13] As to the requirement that the requisition be “signed” it is submitted on behalf of the applicants that the cursive signatures or printed signatures of the unit owners met the requirement that the document be “signed”.

- [14] As to the requirement in s. 46 (2)(b) that the requisition: “state the nature of the business to be presented at the meeting,” it was not submitted on behalf of the respondent that the requisition forms were in any way deficient in this regard. I have concluded that the requisition forms clearly stated the nature of the business to be presented to the meeting and as such, this requirement is met.

Analysis:

- [15] It has been stated in a number of decisions of this court that the condominium legislation is remedial in nature and should not be rigidly or narrowly construed: *Middlesex Condominium Corp. No. 87 v. 600 Talbot Street London Ltd.* (1998), 37 O.R. (3d) 22 (C.A.).
- [16] Further, as far as possible and with due regard to the particular mutual covenants of individual owners, courts should bring a broad and equitable approach to the resolution of disputes. Nothing in the condominium statute restricts the remedies otherwise available for failure to perform a duty imposed by the legislation: *York Condominium Corp. No. 59 v. York Condominium Corporation No. 87* (1983), 42 O.R. (2d) 337 (C.A.); the *Act*, s. 136.
- [17] This application has been brought in accordance with s. 134(1) of the *Act* which provides as follows:

Compliance order

134. (1) Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.

Pre-condition for application

(2) If the mediation and arbitration processes described in section 132 are available, a person is not entitled to apply for an order under subsection (1) until the person has failed to obtain compliance through using those processes.

Contents of order

(3) On an application, the court may, subject to subsection (4),

(a) grant the order applied for;

- (b) require the persons named in the order to pay,
 - (i) the damages incurred by the applicant as a result of the acts of non-compliance, and
 - (ii) the costs incurred by the applicant in obtaining the order; or
- (c) grant such other relief as is fair and equitable in the circumstances.

Order terminating lease

(4) The court shall not, under subsection (3), grant an order terminating a lease of a unit for residential purposes unless the court is satisfied that,

- (a) the lessee is in contravention of an order that has been made under subsection (3); or
- (b) the lessee has received a notice described in subsection 87 (1) and has not paid the amount required by that subsection.

Addition to common expenses

(5) If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the common expenses for the unit and the corporation may specify a time for payment by the owner of the unit.

- [18] Subsection 134(3)(c) provides that in addition to the relief set forth in subparagraphs (a) and (b), the court may: “grant such other relief as is fair and equitable in the circumstances”. The court has a broad ameliorative authority to grant fair and equitable relief in accordance with this section: *Davis v. Peel Condominium Corp. No. 22*, 2013 ONSC 3367, at para. 1.
- [19] It is the position of the respondent that although the *Act* has been held to have a consumer protection aspect to it, that should not be taken into account in considering the issues in dispute on this application. It is essentially the position of the respondent that the issues at stake on this application arise from questions of corporate governance and that the language of the legislation should be construed accordingly and not with a view to consumer protection.
- [20] I disagree with the position of the respondent. The commercial reality of the relationship between the condominium unit owner and the condominium Corporation is such that both

the aspects of corporate governance and consumer protection are concurrently engaged and must be weighed when considering a dispute such as this. The provisions of the legislation must be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objectives: *Legislation Act*, 2006, S.O. 2006, c. 21, Sched. F, s. 64.

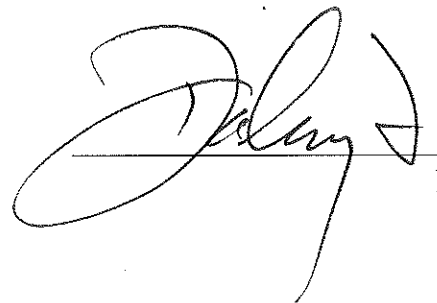
- [21] There is no requirement in the *Act* that the requisition referred to in s. 46 be contained in a single document, nor is there a prohibition to the delivery of counterparts which make up a single document, namely a requisition. As such, I have concluded that giving the liberal and remedial interpretation of the legislation, as is required in the consumer protection context and at the same time balancing orderly corporate governance concerns, the 63 requisition forms collectively constitute the requisition called for in s. 46.
- [22] As to the respondent's position that the names inserted on the 44 requisition forms, which were recorded in print, as opposed to in cursive writing, I have concluded that the printed names of the condominium unit owners equally constitute the document being "signed" as required by the *Act* as do the requisition forms where the owners have recorded their names in cursive writing.
- [23] The intention of the owner in each case is clearly made out that they wish to have a meeting convened in accordance with s. 46. It is notable that the respondent does not assert that the requisition forms were executed by persons other than the condominium owners nor is any suggestion of fraud or tampering with these documents made. Thus, the authenticity of the requisition forms is not in issue on this application.
- [24] In *R. v. Kapoor* (1989), 52 C.C.C. (3d) 41 (Ont. H.C.) Watt J., as he then was, considered the requisites of a "signature". At pp. 65–66 of his reasons, he considered several judicial dictionary definitions of signature, and he stated:

In general terms, signature is the name or special mark of a person written with his or her own hand as an authentication of some document are writing: see *Shorter Oxford English Dictionary*, rev'd 3d ed., vol. 2 (Oxford: Clarendon Press, 1950) at 1994. It is not essential that the signature be in any particular form, as for example, that include all the given names as well as the surname of the signatory, or that it be legible. Indeed, in some cases, it may amount to no more than a mark.

- [25] I have examined the requisition forms submitted with this application, and the names of the condominium unit owners are recorded thereon either in cursive writing or in print. There is no requirement in the legislation that the requisition be "signed" in cursive writing. As such, I am satisfied that the intention of each condominium owner is clearly and unequivocally conveyed on each of the requisition forms and collectively the forms constitute a requisition under s. 46.
- [26] I conclude, therefore, that the applicants and the other condominium unit owners who submitted collectively the required requisition have satisfied the requirements of s. 46,

including the requirement that the owners own at least 15 per cent of the units. Accordingly, the Corporation, by failing to call the meeting required in accordance with s. 97 (3) of the *Act*, has violated the legislation.

- [27] Although the applicant's notice of application calls for interim, interlocutory and final injunctive relief, these aspects of the application were not pursued in argument.
- [28] In the result, it is ordered that pursuant to s. 134 of the *Act* the respondent, Metropolitan Toronto Condominium Corporation No. 595, shall comply with the requirements of ss. 46 and 97(3) including the calling and holding of a meeting of the owners to consider the requisition which was delivered to the Corporation in November 2013, within 35 days from the date of release of these reasons. The meeting shall be called, and scheduled with the required notice given to the condominium unit owners of the Corporation as required by *Act*.
- [29] As to costs of this application, counsel for the applicants shall file with the court submissions on costs of no longer than two pages plus a costs outline within 15 days from the release of these reasons, with reply submissions of a similar length to be submitted on behalf of the respondent within 15 days thereafter.



DALEY J.

Released: June 20, 2014

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REASONS FOR JUDGMENT

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APPENDIX “A”

- Attached hereto is the “Requisition Form”

November 19, 2013

Requisition For a Meeting with the Board Of Directors

The Board of Directors gave Notice on November 13, 2013 that they intend to replace the unglazed porcelain tiles installed at the elevators from the 22ⁿ^d to the 2nd floor with new porcelain tiles at an estimated cost of \$72,000. (\$81,360. Inclusive of tax).

The current tiles were installed in 2011 and have an estimated remaining economic life of 25 to 30 years. This proposal by the Board is therefore considered to be unnecessary, costly and disruptive to all owners.

This petition herein proposes, under Section 46 of the Condominium Act, to requisition a meeting with the Board of Directors for the purpose of discussing and requesting a vote/proxy by all owners on this unnecessary, costly and disruptive replacement of the existing tiles.

This is your building and you have a right to state your position.

A requisition for a meeting of owners requires a response from at least 15% of the unit owners. Your support for a meeting with the Board of Directors for the above stated purpose may be indicated by signing below and delivering this letter to the Management Office or leaving same at the concierge desk for the attention of the Board.

2014 ONSC 3503 (Canada)

Name _____

Unit # _____ Date _____

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