CITATION: London Condominium Corporation No. 13 v. Awaraji, 2007 ONCA 154
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COURT OF APPEAL FOR ONTARIO

RE: **LONDON CONDOMINIUM CORPORATION NO. 13 (Applicant (Respondent)) – and – CHRISTIAN AWARAJI and TANIA BAYOUD (Respondents (Appellants))**

BEFORE: **SIMMONS and MACFARLAND JJ.A. and PARDU J. (*ad hoc*)**

COUNSEL: **Wade W. Sarasin**
for the appellants Awaraji and Bayoud

Jocelyn R. Kraatz
for the respondent London Condominium Corporation No. 13

HEARD & RELEASED ORALLY: **February 21, 2007**

On appeal from the judgment of Justice W.A. Jenkins of the Superior Court of Justice dated December 19, 2005.

ENDORSEMENT

[1] The appellants appeal from an order of Jenkins J. requiring that they remove their satellite dishes from their patio terrace. The appellants' patio terrace is an exclusive use common element in London Condominium Corporation No. 13. The Declaration of the Condominium Corporation provides as follows in paragraph 7.(1)(h):

> 7. Occupation and Use
>
> (1) The occupation and use of the units shall be in accordance with the following restrictions and stipulations:
>
> ...
>
> (h) No television antennae, aerial, tower similar structure and appurtenances thereto shall be

> erected on or fastened to any units, *except for or in connection with a common television cable system.* [Emphasis added.]

[2] In addition, By-law 1 of the Condominium Corporation provides in Schedule B, item (l):

> (l) No television antenna, aerial, tower or picture and appurtenances thereto shall be erected on any part of the common elements except as provided in the Declaration.

[3] Finally, the Condominium Corporation enacted a rule, the relevant portions of which are as follows:

> The following are the standards adopted by the Board of Directors for satellite dish or cable installation within the Corporation. *These standards are intended to give the complex a uniform standard of appearance and quality that will enable all owners to benefit from well maintained units.*
>
> **STANDARDS**
>
> **SATELLITE:**
>
> 1) The Corporation has an agreement with Star Choice for exclusive delivery of Satellite Services. *This service has one dish on each set of units. No other Satellite services are allowed.*
>
> ...
>
> **CABLE:**
>
> 1) Cable is delivered by Rogers Cable 633-2180. Rogers has a box on site.
>
> 2) All cables running to the units will be either buried or attached to the units under the siding. The installer is responsible for all cable. No cable is to be left in such a manner as to interfere with grounds maintenance.

> 3) No cable is to run up the outside of the siding.
>
> ...

[4] The appellants raise three main issues on appeal.

[5] First, the appellants contend that the Declaration prohibits installation of satellite dishes. They say that the words "except for in connection with a common television cable system" encompass cable television systems only and do not permit satellite television services. By permitting some satellite dishes (contrary to the terms of the Declaration) and not others, the Condominium Corporation is acting in a discriminatory fashion. Accordingly, the application judge should have exercised his discretion to decline to enforce the Declaration against them.

[6] We disagree. In our view, by enacting the rule that it did, it is clear that the Condominium Corporation interpreted its Declaration and By-laws as permitting a common television system encompassing both cable and satellite components. Moreover, we consider that it is for the Condominium Corporation to interpret its Declaration and By-laws and that so long as its interpretation is not unreasonable, the court should not interfere.

[7] In this case, in our opinion, the interpretation of the Declaration adopted by the Condominium Corporation is not unreasonable. While the exception to the prohibition in the Declaration refers to "*a common television cable system*", we consider that those words are capable being construed in a generic way, and as signifying nothing more than a requirement that there be a common television network. Since Star Choice Satellite Services is the only permitted satellite service provider, the Condominium Corporation was not acting in a discriminatory fashion by requiring that the appellants remove their satellite dishes installed by a different satellite service provider.

[8] The appellant's second argument is that satellite dishes cannot come within the definition of "a common television cable system" as set out in the Declaration because satellite dishes, by their nature, are stand alone units that do not provide a common service. We do not accept this submission. No evidence was adduced on this issue as part of the application However, we note that the rule enacted by the Condominium Corporation states in part, as follows:

> The Corporation has an agreement with Star Choice for exclusive delivery of Satellite Services. *This service has one dish on each set of units*. [Emphasis added.]

In our view, it is clear on the face of the rule that the permitted satellite services form part of a common system.

[9] The appellant's final argument is that there was no evidence that the two satellite dishes installed on their patio terrace were visible to onlookers and therefore there was no evidence that their satellite dishes contravene the aspect of the rule aimed at preserving the uniform appearance of the condominium complex. The application judge should therefore have exercised his discretion not to enforce the rule as against the appellants because the rule as it related to them did not serve one of the two permissible purposes of a rule under s. 58 of the *Condominium Act*.

[10] We disagree. The rule enacted by the Condominium Corporation indicates on its face that it was aimed at preserving a uniform appearance and quality in the condominium complex, which is a general purpose that appears to comply with s. 58 of the *Condominium Act*. To the extent that the appellants wished to assert that the application of the rule in their case would not comply with the permitted purposes of a rule under s. 58 of the *Condominium Act*, it was for them to adduce evidence on that issue. As the appellants adduced no admissible evidence on the application, we would not give effect to this argument.

[11] The appeal is therefore dismissed. Costs of the appeal are fixed in the amount of $3,000.00 on a partial indemnity scale inclusive of disbursements and applicable G.S.T.

"Janet Simmons J.A."

"J. MacFarland J.A."

"G. Pardu J. (*ad hoc*)"