

Case Name:

**Metropolitan Toronto Condominium Corp. No. 949 v.  
Staib**

Between

Metropolitan Toronto Condominium Corporation No. 949,  
(applicant (appellant)), and  
Nancy Staib, (respondent (respondent in appeal))

[2005] O.J. No. 5131

Docket: C43488

**Ontario Court of Appeal  
Toronto, Ontario**

**E.A. Cronk, R.P. Armstrong and S.E. Lang JJ.A.**

Heard: November 25, 2005.

Oral judgment: November 25, 2005.

Released: December 2, 2005.

(4 paras.)

*Real property law — Condominiums — Bylaws — Appeal by Metropolitan Toronto Condominium Corporation from the dismissal of its application to require Staib to comply with its "no pets" policy dismissed — It would have been inequitable to require Staib to comply with the policy, given that Metropolitan knew she had resided with her cat for 10 years.*

Appeal by Metropolitan Toronto Condominium Corporation from the dismissal of its application to require Staib to comply with its "no pets" policy. Staib had resided in her condominium with her cat for more than 10 years. Metropolitan's maintenance personnel had been in her condominium throughout that 10-year period. In 2004, Metropolitan decided to step-up enforcement of its "no pets" policy.

**HELD:** Appeal dismissed. There was no basis upon which to interfere with the application judge's discretionary decision. Given the facts, it would have been inequitable for the application judge to make the requested compliance order.

Appeal From:

On appeal from the judgment of Justice Harriet Sachs of the Superior Court of Justice dated April 28, 2005.

**Counsel:**

Mark H. Arnold and Christopher J. Jaglowitz for the appellant

Benjamin J. Rutherford for the respondent

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**ENDORSEMENT**

The following judgment was delivered by

¶ 1 **THE COURT** (oral endorsement):— In our view, on the record in this case, there is no basis upon which to interfere with the application judge's discretionary decision to deny the relief sought by the appellant. The respondent did not challenge the validity of the "no pets" policy in the declarations of the appellant condominium corporation. Rather, she asserted that the policy should not be enforced against her in the particular circumstances of this case. We agree.

¶ 2 The uncontradicted evidence before the application judge included the fact that the respondent had

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resided in her condominium with her cat for more than 10 years; the appellant's maintenance personnel had been in her condominium throughout that 10 year period; the cat was "invisible" to other unit holders, but there was no suggestion that it was "invisible" to the maintenance personnel; and the appellant reached a decision only in 2004 to step-up enforcement of its "no pets" policy.

¶ 3 In our view, given these facts, it would have been inequitable for the application judge to make the requested compliance order.

¶ 4 For these reasons, the appeal is dismissed. The respondent is entitled to her costs of the proceedings before the application judge in the amount of \$3,000, as fixed by the application judge. The respondent is also entitled to her costs of this appeal on the partial indemnity scale, fixed in the total amount of \$1,930.75, inclusive of disbursements and Goods and Services Tax.

E.A. CRONK J.A.  
R.P. ARMSTRONG J.A.  
S.E. LANG J.A.

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