

*Case Name:*

**Muskoka Condominium Corp. No. 39 v. Kreutzweiser**

**Between**

**Muskoka Condominium Corporation No. 39, Applicant, and  
Drew Kreutzweiser, Respondent**

[2010] O.J. No. 1720

2010 ONSC 2463

Court File No. CV-10-34-00

**Ontario Superior Court of Justice**

**T.M. Wood J.**

Heard: April 26, 2010.  
Judgment: April 26, 2010.

(16 paras.)

**Counsel:**

Michael Spears, for the Applicant.

Drew Kreutzweiser, in person.

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**1 T.M. WOOD J.:**-- This is an application by the corporation seeking first a declaration that the respondent is in breach of the declaration and rules of the corporation and as such is in breach of *The Condominium Act*. Secondly it seeks an order that the respondent comply with a direction by the **condominium corporation** that he permanently remove all cats from the condominium property and thirdly that the respondent pay the applicant's costs on a substantial indemnity basis.

**Findings**

**2** The respondent having filed no material, I make the following findings on the uncontradicted evidence of the applicant.

**3** The applicant is a **condominium corporation** within the meaning of the Act operating a townhouse complex within the town of Bracebridge. The respondent is the occupier of unit number

27 registered in the name of his parents. He owns at least two cats which roam freely about the condominium complex. The condominium board began receiving complaints from other unit owners in 2007 about the activities of these cats. The complaints centered on the cats defecating and leaving dead prey on common elements of the condominium property.

4 The condominium declaration provides that there can be only one pet per unit and that "all dogs and cats must be kept under personal supervision and control and held by leash at all times during ingress and egress from the unit and while on the common elements of the buildings or on the grounds." Acting under this authority the board caused a letter to be sent to the respondent on January 15, 2008 reminding him of the requirement that the cats be leashed when outside. No response was received to this letter. Both the activities of the cats and complaints continued causing the board to have another letter sent on September 10, 2008. This detailed the complaints and gave warning that the cats might be deemed a nuisance pursuant to Article IV(1)(j) of the declaration and that if that occurred he would have to get rid of them. Again there was no response.

5 On June 30, 2009 the board sent another letter again warning that the cats would be deemed a nuisance and he would be required to get rid of them if their activities were not curbed. There was no response to this letter. On August 25, 2009 the board met and deemed the cats to be a nuisance. A letter was sent to the respondent on September 2, 2009 advising him of this and providing a deadline of September 15 by which time the cats had to be permanently removed from the condominium. This letter also advised that if the deadline were not met the matter would be placed in the hands of the corporation's solicitors and there would be costs involved in the enforcement. On October 13, 2009 a lawyer's letter was sent repeating the information in the September 2nd letter and again emphasising that cost consequences could be expected if the board were forced to take further action.

6 This was followed by a further letter from the corporation's present counsel on January 8, 2010 detailing the authority of the board to declare the cats a nuisance, the procedure for enforcement of the board's declaration, and the cost consequences to be expected were enforcement necessary. A further deadline of January 15, 2010 was provided for the removal of the cats.

7 As a result of the letters in the fall and winter of 2009/2010 the respondent began making threats and intimidating both other condominium owners and the manager of the corporation. On January 14, 2010 a further lawyer's letter was sent to him warning him not to pursue these actions and to contact only the lawyers directly about the matter. The January 15 deadline passed without the removal of the cats and this application is the consequence.

### **Discussion**

8 Section 19(1) of the *Condominium Act* provides that all owners and occupiers of units must comply with the **condominium corporation's** declarations and rules. Section 17(3) of the Act requires a **condominium corporation** to enforce the declaration and rules. These provisions are crucial to the orderly operation of condominiums and for the protection of condominium unit owners and occupiers. The owner of a condominium unit does not have a classic freehold. He or she is not at liberty to deal with property in the same manner as the owner of a single family residential dwelling might be. The nature of a condominium is that in return for the advantages gained through common ownership of certain elements some degree of control over what can be done with those common elements is given up. The details of what is given up are set out in the condominium declaration and its bylaws and rules. It is both the right and obligation of a unit owner or occupier to

see that these are obeyed. *Re Carleton Condominium Corporation N 279 v. Rochon et al* [1987] O.J. No. 417, Ont C.A. Finlayson J.A. at para. 26.

9 Where the court is asked to enforce a declaration by a corporation great deference should be shown to that declaration. It is not for the court to substitute its view of what is reasonable for that of the board. If the board has acted reasonably and not capriciously it is important that the court support the board's decision. *York Condominium Corporation No. 382 v. Dvorchik* [1997] O.J. No. 378 (C.A.) at paragraph 5.

10 The respondent has argued that he and his family are being picked on by the board. Although he offers no evidence he says that there are many pets running free within the townhouse complex and that the wild animals his cats killed, were being fed by other residents who were thereby causing a nuisance in their own right.

11 While it may be true that other pets are wandering around the condominium complex unleashed on occasion or that other residents are feeding chipmunks, and song birds, it would appear that these activities have not caused such a nuisance as to require the board to act. While a board has a duty to enforce its own declaration and rules where the violation thereof is causing a problem, not every minor violation of a declaration must be met with an enforcement procedure. It is for the board to exercise its discretion in the best interests of the residents of the corporation.

12 In this case the difficulties caused by the respondent's cats are of long-standing and are well-documented. The board began warning the respondent of the problem and of the consequences of not remedying it over two years ago. It is clear that complaints were repeatedly received from more than one resident. In its discretion the board deemed these complaints to be valid and that the respondent was violating the declaration and rules of the **condominium corporation** in a way that could not continue.

13 I am satisfied that the board was within its rights to pass the declaration deeming the cats a nuisance and requiring that they be removed. I am further satisfied that the board acted reasonably in providing the applicant with notice over a two-year period before taking action. The actions of the board should therefore be upheld by the court.

14 The corporation argues that it should be entitled to costs on a full indemnity basis. The respondent argues that the charges are excessive for reasons which are not before this court. He alleges that the Corporation is in default on certain work to be done on his unit. As this issue is not before the court and there is no evidence of such default filed I am unable to take this matter into account in assessing costs.

15 The Corporation repeatedly warned the respondent of the cost consequences of enforcement proceedings. The respondent failed to respond to any communication from the corporation or to comply with its directions. Therefore these costs are to a large extent the consequences of the respondents own actions.

16 No part of these costs should be borne by the respondent's neighbours who are blameless in this matter. The Corporation declaration provides that any owner is bound to indemnify the corporation for any loss occasioned by his or her action. For these reasons it is appropriate that the corporations costs be on a full recovery basis **Order**

1. There will be a declaration that the respondent is in breach of *The Condominium Act* and the declaration and rules of Muskoka **Condominium Corporation** No. 39.
2. The respondent shall permanently remove all cats kept in Unit 27 from the condominium project by May 1, 2010.
3. Costs to the applicant on a full recovery basis fixed at \$19,657.23 payable forthwith.

T.M. WOOD J.  
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