CITATION: Nipissing Condominium Corporation No. 4 v. Kilfoyl, 2010 ONCA 217
DATE: 20100319
DOCKET: C51101

COURT OF APPEAL FOR ONTARIO

Gillese, Juriansz and LaForme JJ.A.

BETWEEN

Nipissing Condominium Corporation No. 4

Applicant (Respondent)

and

Paul Kilfoyl, Stephanie Kilfoyl, Chris McGuire, Trevor Mous, Chris Bruce and Kristen Campbell

Respondents (Appellants)

Paul E. Trenker, for the appellants

Sonja Hodis, for the respondent

Heard and released orally: March 3, 2010

On appeal from the judgment of Justice Alfred J. Stong of the Superior Court of Justice dated September 9, 2009.

ENDORSEMENT

[1] The appellants own two townhouse units in the condominium operated by the respondent, Nipissing Condominium Corporation No. 4 ("NPCC No. 4").

[2] NPCC No. 4 brought an application against the appellants pursuant to, among other things, s. 134(1) of the *Condominium Act, 1998*, S.O. 1998, c. 19 (the "*Condominium Act 1998*"). The primary reason for bringing the application was to enforce the terms of the Declaration and By-law that had been registered on title many years ago, which stipulated that the units were to be occupied as a "one family residence". Part I(1) of the Declaration defined "family" as "a social unit consisting of parent(s) and their children, whether natural or adopted and includes other relatives if living with the primary group." NPCC No. 4 implemented the Declaration by allowing each unit to be occupied only by members of a family who are related to each other. Beginning in 2005, problems had arisen because a number of the units had been rented to multiple unrelated tenants.

[3] NPCC No. 4 was successful on the application. It obtained a judgment in which a number of declarations were made, including that the appellants were in breach of the *Condominium Act 1998*, that the condominium units can be occupied only as a one family residence as defined in the Declaration, and that occupation by multiple unrelated tenants is a breach of the Declaration and By-law.

[4] The appellants appeal, asking this court to set aside the judgment below. The court found it unnecessary to call on the respondent.

[5] The appellants' primary argument on appeal is that it is unreasonable to restrict occupancy in this day and age on the basis of whether the occupants are related to one

another. Counsel relies primarily on the reasoning of the Supreme Court of Canada in *Bell v. The Queen*, [1997] 2 S.C.R. 212. With respect, *Bell* is of no assistance to the appellants because it is a land use planning case. The principles that apply to land use planning are different than those that apply when considering the validity of a condominium's declaration and by-laws. Section 7(4)(b) of the *Condominium Act 1998* permits declarations to contain conditions or restrictions on the occupation and use of units. Owners of units, among others, must comply with the *Condominium Act 1998*, declaration and by-laws: see s. 119(1) of the *Condominium Act 1998*.

[6] In our view, the application judge correctly concluded that the only issue on the application was whether the occupancy provision violated the *Human Rights Code*, R.S.O. 1990, c. H.19. Further, he correctly decided that the occupancy provision does not infringe any ground listed in s. 2(1) of the *Human Rights Code*.

[7] The evidence below consisted solely of that provided by the NPCC No. 4. The appellants filed no responding material. The evidence showed that the appellants rented their units to students who were not living together because of some familial connection. It also showed that when the appellants purchased the units, the status certificate showed that they could not be leased to multiple tenants but only to single families.

[8] We see no error in the application judge's exercise of discretion under s. 134 of the *Condominium Act*. Paragraph 29 of the reasons of the application judge is a succinct summary of his reasoning in that regard:

> NPCC No. 4 is a condominium project geared toward families living in their individual units in the project and sharing communal responsibility for the common areas. The peaceful use and enjoyment of each family of its own unit ought not to be breached by the actions of any individual who does not conform to the contractual obligation entered into in accordance with the Declaration when the condominium was purchased. The condominium project is unique in that individual families have their privacy protected within their own units but at the same time are required to live by rules of the community as they pertain to the common areas used by all members of the individual condominium project.

[9] Accordingly, the appeal is dismissed with costs to the respondent fixed at $7500, all inclusive.

"E.E. Gillese J.A."
"R.G. Juriansz J.A."
"H.S. LaForme J.A."