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Ottawa-Carleton Standard **Condominium Corp**. No. 671 v. Friend

Ottawa-Carleton Standard **Condominium Corporation** No. 671, Applicants and Anthony Marcus Friend and Henriette Suzanne Friend, Respondent

Anthony Marcus Friend and Henriette Suzanne Friend, Applicants and Ottawa-Carleton Standard **Condominium Corporation** No. 671, Respondent

Ontario Superior Court of Justice

Maranger J.

Heard: September 9, 2013
Judgment: October 9, 2013
Docket: 12-55105

Counsel: Nancy L. Houle, for Applicant / Respondent

Andrew J. Prevost, for Respondent / Applicants

Subject: Civil Practice and Procedure; Corporate and Commercial; Property

Business associations

Civil practice and procedure

Real property

Statutes considered:

Condominium Act, 1998, S.O. 1998, c. 19

Generally — referred to

s. 97 — considered

s. 135 — considered

***Maranger J.*:**

1 This application and cross-application arise as a result of a dispute between a **Condominium Corporation** and the unit owners, Mr. and Mrs. Friend. The **Condominium Corporation** is a seven story residential condominium, comprising 50 residential units, and 56 parking units, it is located at 260 Besserer Street in the city of Ottawa.

2 The Ottawa-Carlton Standard Condominium No.671 shall hereafter be referred to as the condominium and Anthony Marcus Friend and Henriette Suzanne Friend as the Friends.

3 The dispute in question concerns the payment of approximately $3000 relating to the installation of a water meter and a water bill, as well as an order for compliance with the condominium's bylaws relating to minor complaints, the complaints in question could have been easily rectified.

4 The legal costs being claimed by counsel for the parties resulting from the dispute range from $12,500 to almost $30,000.

Factual background

5 This matter proceeded by way of application and affidavit material filed, based on that material and the representations of counsel I make the following findings of fact:

- The condominium owners purchased their units on the understanding that energy for heating and cooling would be metered for each unit, and that the cost to heat and cool units would be charged to the respective unit owners based on consumption.

- The condominium's Board of Directors determined that the system in place resulted in inequities respecting energy costs. It was also determined that the existing meters measured water flow through each unit rather than the energy consumption of each unit.

- At a meeting of the owners on November 26, 2008 it was determined that the condominium would replace the originally installed meters with new energy meters and that the condominium would absorb the costs of their purchase and installation. The only owners to refuse access to their unit for the purposes of installing the new meters were the Friends.

- By the fall of 2009, 49 of the 50 units had the newly installed energy meters. The Friends took the position that they would only allow access to their unit on certain conditions. The condominium found the conditions to be unacceptable, and advised the Friends that if they refused to provide access for the purposes of installing the meter at that time they would ultimately be required to pay for the installation costs.

- The condominium at various times requested access to the unit to install the meter including: May 24, August 5, September 26, and November 24, 2011, and May 10, 2012. The requests also included warnings concerning the necessity of bringing a court application, and that the Friends would be responsible for paying the cost of the installation. Access was still denied.

- This application was brought on July 31, 2012, and a case conference was held before Master MacLeod on November 12, 2012 following which an order was agreed to that the meter be installed. The energy meter was installed in The Friends unit at the expense of the condominium in January 2013.

- It was further agreed at the case conference that the issues of the cost of the installation of the meter, the

issue of the past obligation to pay water charges the alleged breaches of the bylaws and the legal costs would be the subject of a future hearing.

• The evidence overwhelmingly supports the proposition that the Friends have breached the condominium's rules/bylaws by doing the following: they threw snow from their seventh floor terrace, they improperly stored their kayak, bicycles and skis, and they placed planters on their balcony railing.

• The kayak was removed following the case conference by agreement before Master MacLeod.

• I find as a fact that the condominium and in particular the Board of Directors acted in a manner that was fair and reasonable throughout.

• I find as a fact that the Friends in particular Mr. Friend simply decided that the rules of the condominium were not going to apply to him.

6 That a matter such as this ended up in Court is unfortunate, the cost consequences here are 5 to 10 times the value of the claim.

7 The legal arguments advanced by the Friends in respect of how the court should apply and interpret the *Condominium Act* S.O.1998, c.19. "The Act" to the facts of this case are without merit. They advocated the position that the condominium in changing the meters in the units did not strictly comply with section 97 of the Act. I disagree. The condominium complied meticulously with the act. In any event, I find that the replacement of the meters in the circumstances of this case did not constitute a "change" within the meaning of section 97 of the *Act* .

8 The claim advanced by the Friends under section 135 of the Act respecting an oppression remedy was not supported by the evidence presented at the hearing. The condominium did nothing that was oppressive, prejudicial, nor did it act in a way that unfairly disregarded their interests.

9 Therefore, the cross application brought by the Friends is dismissed. The application brought by the condominium is granted and this court orders the following:

• The Friends shall pay all costs associated with the installation of the energy meter in their unit, as well as the back payment of water charges as calculated by the condominium.

• The Friends are ordered to comply with all of the bylaws of the condominium including not throwing snow from the balcony, not storing a kayak, canoe or other item in the parking unit, and any other rules enacted by the condominium that apply to its unit owners.

• I have reviewed the bill of costs presented by counsel representing the condominium and find that it is somewhat excessive in all the circumstances, nonetheless the condominium is entitled to reimbursement of some of its costs; I hereby fix costs at $15,000 all-inclusive payable by the Friends to the condominium forthwith.

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