Case Name:

Peel Condominium Corp. No. 283 v. Genik

RE: Peel Condominium Corporation No. 283, and
Helen Genik

[2007] O.J. No. 2544
Court File No. CV-07-1052-00

Ontario Superior Court of Justice
F. Dawson J.

Heard: June 22, 2007.
Judgment: June 27, 2007.
(15 paras.)

Counsel:

Jonathan H. Fine, for the Applicant.

Helen Genik, Self-Represented.

ENDORSEMENT

¶ 1 **F. DAWSON J.**:— The respondent Helen Genik became the owner of a unit within Peel Condominium Corporation No. 283 on July 17, 1998. The corporation has applied to the court for an order enforcing sections 98 and 119(1) of the *Condominium Act, 1998* S.O. 1998, C.19, section III(4)(b) of the applicant's declaration, and rule 18 of the corporation's rules.

¶ 2 The application arises out of a dispute concerning the installation of satellite dishes on a number of units of the condominium corporation. On June 22, 2007 I heard this application involving the respondent. Two other applications, which vary slightly on their facts, could not be reached and were adjourned to motions court on July 17, 2007, when they will come before another judge. Neither Ms. Genik, nor the other respondents are represented by counsel. Ms. Genik has not filed any evidence on the application.

¶ 3 The evidence filed by the applicant shows that Ms. Genik caused a satellite dish to be installed on her unit without permission from the corporation. It appears from a series of letters filed as exhibits to the applicant's affidavit evidence that at one point the dish was removed, perhaps so some roof repairs could be completed, but it was later reinstalled despite the fact that Ms. Genik had been advised she was not permitted to do so. In a number of letters sent to Ms. Genik in 2005 and 2006 on the applicant's behalf, Ms. Genik was advised her installation of the satellite dish violated the *Act*, the corporation's declaration, and the rules established by the corporation.

¶ 4 Although Ms. Genik has filed no evidence, it would appear from the exhibits attached to the applicant's affidavits, and in particular from Ms. Genik's submissions to the court, that she feels she is justified in her position, because in her mind there remains some hope that this matter may be dealt with

at a meeting of the condominium corporation to be held in the near future. Unfortunately for Ms. Genik, this view of the situation is legally incorrect.

¶ 5 Section 98(1) of the *Condominium Act*, 1998, provides that an owner of a condominium unit may make an addition, alteration or improvement to a common element, provided it is not contrary to the *Act* or the corporation's declaration, and even then, only if:

(a) The board, by resolution, has approved it, and
(b) The owner and the corporation have entered into an agreement that allocates the costs, sets out respective duties in relation to things such as repair, damage, and insurance; and
(c) The agreement addresses certain matters required to be addressed under regulations made pursuant to the *Act*.

¶ 6 I have paraphrased portions of s. 98 of the *Act*. The full text of s. 98 is contained in the application record served on the respondent. There are other requirements to s. 98 as well.

¶ 7 The evidence before the court clearly establishes that the satellite dish in question here has been installed in violation of this legislation. There is nothing that can be done at any meeting of the condominium corporation that can change that fact, and such considerations are irrelevant. In addition, I would point out that s. 119(1) of the *Act* requires, not surprisingly, that all owners, occupiers or lessors of a condominium unit, comply with the *Act*. In addition, under the *Act* the corporation is required to take steps to enforce compliance. The corporation has only resorted to the court process after more than two years of trying to obtain voluntary compliance.

¶ 8 The evidence before me also shows that the respondent's satellite dish is in contravention of the declaration and rules of the corporation as well.

¶ 9 This is not a situation in which mediation or arbitration is required. These are circumstances in which the evidence establishes a clear violation of the *Act*, the declaration and the rules. Those who choose to become owners or residents of condominium units are required by law to comply with the *Act*, declaration and rules, in the common interest of all residents of the development.

¶ 10 An order will go in accordance with the draft order provided.

Costs

¶ 11 The applicant has provided a costs outline and points out that pursuant to s. 134(5) of the *Act* an order for costs against an owner shall be added to the common expenses for the unit. Counsel for the applicant also submits that costs should be awarded on a full indemnity basis having regard to the fact that the costs associated with this enforcement proceeding will otherwise have to be shared by the other unit owners through their common expenses, when they are not involved.

¶ 12 Counsel claims disbursements of $1,181.66, plus fees and G.S.T., bringing the total costs claim on a full indemnity basis to $5,479.96. Counsel was called to the bar in 1976, has expertise in condominium law, and is charging his client $450.00 per hour.

¶ 13 I will not allow this amount in full. Having reviewed the costs outline it appears amounts have been included for reviewing the issue with the board of directors. This aspect of the matter is more related to the general interest the board would have than to this specific dispute. As I have mentioned

other residents are also involved and this issue in a general sense has come before the board on a number of occasions. It also seems to me that senior counsel did almost all of the work, when junior counsel was also working on the file. I must also have regard to the general principle that costs must be in accordance with what a losing party may reasonably expect to pay. In addition, while senior counsel is very experienced in condominium matters and charges an hourly rate of $450.00 to his client, this is a matter that could easily have been handled by less experienced counsel. The matter was argued in under an hour.

¶ 14 I also note that photocopying has been charged at $0.25 a page, which in my view is excessive, and there are $563.95 in process server fees, but no receipts have been provided.

¶ 15 I would fix total costs including disbursements and G.S.T. at $3,350.00. I have added this figure to the draft order. A copy of the order as signed is attached to this endorsement.

F. DAWSON J.

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