

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**PEEL STANDARD CONDOMINIUM CORPORATION NO. 721**

**Applicant**

**-and-**

**RITA DERVENI and ESAT DERVENI**

**Respondents**

Transcript of the endorsement of Justice van Rensburg made March 30, 2007

**ENDORSEMENT**

**Apl. B. Rutherford  
Resp. Self**

This is an application by the applicant condominium corporation under section 134 of the Condominium Act to require the respondents, the owners of Unit 11, Level 1 to remove a concrete walkway that was installed by them in 2005. The walkway has been installed on what is clearly part of the common elements of the condominium although it is adjacent to and connected to the Derveni's unit. The walkway was installed without the consent of the condominium Board which was required under the terms of the Declaration and the Condominium Act. The applicant has requested its removal first because it is illegal as it was installed without consent but also for the practical reasons that it may obstruct access to certain below grade utilities, because the condo. corporation is responsible for and has liability for all installations in common areas unless an agreement exists with the unit owner and because this would set a precedent for other unit owners who may wish to make similar installations.

While there does not appear to be anything unsafe or unattractive about the walkway and while it may be very useful to the unit owners, nevertheless it contravenes the Declaration and the Act and must be removed.

I have considered the respondents' assertion that the builder may have made certain statements from which the respondents' believed they were entitled to proceed with the walkway, however, even if that were the case it would not change the legal rights of the parties (see *Re Carlton Condominium Corp. No. 279* and *Rochon et al. [1987] O.J. No. 417 (CA)*).

Accordingly, the application is granted and an order shall go for the relief sought at para 1(a) of the Notice of Application. That is, the respondents shall remove the concrete walkway and restore the common elements to their original condition at the time the walkway was installed at their own expense and within 90 days.

Costs of this application are fixed at \$1500 inclusive of G.S.T. and disbursements and are payable by the respondents to the applicant forthwith.

Approval of the draft order by the respondents is dispensed with.

“van Rensberg J.”

#3

ENDORSEMENT

Short Style of Cause: Peer Standard v Dervenichal File No. CV-07-790-00

Date	Counsel	
MAR 30 2007	Mr. B. Rutherford Rep. Self	<p>This is an application by the applicant condominium corporation under s. 134 of the Condominium Act to require the respondents, the owners of Unit 11, level 1 to remove a concrete walkway that was installed by them in 2005. The walkway has been installed on what is clearly part of the common elements of the condominium although it is adjacent to and connected to the respondent Dervenich's unit. The walkway was installed without the consent of the Condominium Board which was required under the terms of the Declaration and the Condominium Act. The applicant has requested its removal first because it is</p>

## ENDORSEMENT

Short Style of Cause:

File No.

Date	Counsel	
		(2)
		<p>                     illegal as it was installed                      without consent but also                      for the practical reasons                      that it may obstruct                      access to certain below-                      grade utilities, because the                      condo. corporation is responsible                      for and has liability for                      all installations in common                      areas unless an agreement                      exists with the unit owner                      and because this would set                      a precedent for other unit                      owners <del>per</del> who may wish                      to make similar installations.                      While there does not appear                      to be anything unsafe or                      unattractive about the                      walkway and while it may                      be very useful to the unit                      holders, <sup>owners</sup> nevertheless it                      contravenes the Declaration                      and the Act and must be                 </p>

# ENDORSEMENT

Short Style of Cause:

File No.

Date	Counsel	(3)
		removed.
		I have considered the respondents' assertion that the builder may have made certain statements from which the respondents believed they were entitled to proceed with the walkway, however even if that were the case it would not change the legal rights of the parties (See Re Carlton Condominium Corp. No 279 and Nocker et al. [1987] OJ No. 417 (CA)).
		Accordingly the application is granted and an order shall go for the relief sought at para 1(a) of the Notice of Application. That is the respondents shall remove the concrete walkway and restore the common elements to their

ENDORSEMENT

Short Style of Cause:

File No.

Date	Counsel	(4)
		original condition at the
		time the railway was
		installed at their own
		expense and within 90
		days.
		Costs of this application
		are fixed at \$1500 inclusive
		of GST and disbursements
		and are payable by the
		respondents to the Applicant
		forthwith.
		Approval of the draft order
		by the respondents is
		deposited with.
		Van Rensburg, J.