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."

Date	Counsel	gad v Derveni dal File No. CV-07-790-0
	Comment	l e e e e e e e e e e e e e e e e e e e
4K 3 0 2007	Upr. B. Kushinter	This is an application by
:	thep. Self	the applicant condominin
		Corporation funder S. 134 07
		the Condonine Act to regue
		the regraduty the owners of
		Unit 11, level 1 to remove
		a porcete valleway that
		nds installed by them in
		2008. The walking has been
		midalled on about is clearly
		part of the common
		eleverts of the condonumin
		arthort it is adjacent to and
		connected to the report
		Dervenis' unit The
		valuay vas installed
		without the consent of the
		Condonum Board Which
		nos required under the
		terms of the Declaration and
		the Condownium act. The
		applicant has requested its
		removal pire because it is

Short Style of Ca	iuse:	File No.	
Date	Counsel		
		uliget do it da installed	
		without consent but also	
		for the practical reasons	
		That it may obstruct	
		acces to certain belon	
		god utilles, be caun the	
		codo coporation is responsible	
		for and has habity for	
		all installations in common	
		areas unless an agreement	
	·	exists with the went owner	
		and because this wanted set	
		a procedent for other unit	
		oursels per who may wish	
		to make unital unitallating	
	MMS [while there does not appar	
		to be auxiling unsafe or	
		wateractive about the	
		naturary and white it may	
		be very useful to the unit	
		be very useful to the units holders nevertheless it	
		contraveres the Declaration	
	**************************************	and the Act and must be	

January 25/02

Page No.

lore style of Cause:		File No.	
Date	Counsel	(3)	
		removed.	
		I have considered the	
		respondent's assuluen that	
	Manual Commence of the Commenc	the builder may have	
		made certain statements	
	· · · · · · · · · · · · · · · · · · ·	from which the respondents'	
	HI PARK AS	believed they were entitled	
		to proceed with the nackway	
		however ever if that were	
	· · · · · · · · · · · · · · · · · · ·	the case it would not	
		change the legal nights of	
	· · · · · · · · · · · · · · · · · · ·	The parties See Re Carton	
		Cardoninum Corp. No 279 and	
		Aochen et al. [1987] 07 No. 417	
	· · · · · · · · · · · · · · · · · · ·	((A))	
		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	
		the common clements to their	
		the common demonts to their	

January 25/02

Page	No.	

ort Style of Cause:		File No.	
Date	Counsel	(4)	
		tigue condition at the	
		time the valley na	
:	<u> </u>	tristalled at their own.	
	,	expense and within 90	
		dap.	
		Loses of Klus applicate	
		are fixed at \$1500 inclus	
		7 657 and de puesenuits	
		and are payable by the	
		reporderts to the applicar	
		forthurth.	
		approval of the draft or	
· · · · · · · · · · · · · · · · · · ·	-	by the respondents is	
		despend with.	
		Van Renhung &	
			
January 25/02			

Page No.