Case Name:

Skyline Executive Properties Inc. v. Metropolitan Toronto Condominium Corp. No. 1385

Between
Skyline Executive Properties Inc., Front Street Properties Inc., Jacob Aboudi, Ezra Aharon, Ampayer Properties Inc., Daniel Avidor, Oren Balaban, Moshe Becher, Mordechai Ben-Ami, Sholmit Ben Shahar, David Ben Shahar, Micahel Burdin, Boris Burdin, Malka Chesner, Yecheskel Chesner, Avraham Cohen, Aviram Cohen, Mordechai Cohen, Miriam Cohen, Tsion Elyasaf, Cohava Elyasaf, Varda Feldman, Mordechai Givon, Yoav Hammer, Chanita Jackson, Joseph Jackson, David Karny, Roni Karny, Marco Libsker, Yana Manelis, Ya'Acov Manelis, Dalhia Martin, Moshe Molcho, Atalia Molcho, Yaffe Monefa, Levia Moore, Mordechai Moore, Dalia Munz, David Munz, Miriam Perl, Asher Perl, Noa Renert, Adam Renert, Dina Rolel, Igor Dyakov, Menashe Rosenfeld, Amit Rotem, Henryk Rottenberg, Drora Rottenberg, Yehudith Shapir, Ilana Shnabel, Jacob Tajtelbaum, Naomi Tajtelbaum, Michael Uri, Yehezkei Yehuda, Dina Yehuda, Amos Wolfson and Oded Zucker, applicants, and
Metropolitan Toronto Condominium Corporation No. 1385, Ian Waldron, Ayesha Kahn, Michael Waring and Patrick Lall, respondents

[2002] O.J. No. 5117
Court File No. 02-CV-228486 CM2

Ontario Superior Court of Justice
Hoilett J.

Heard: October 2-3, 2002.
Judgment: December 20, 2002.
(34 paras.)

Counsel:

Robb Heintzman, for the applicants/respondents by counter-application.
Mark Arnold, for the respondents/applicants by counter-application.
David Nakelsky, for two respondents.
B.D. Moldaver and Patricia Conway, for the intervenor, MTCC No. 1280.

¶ 1 **HOILETT J.**:— The original application brought for, among other things, certain injunctive and declaratory relief has been abandoned. Accordingly, the issues here addressed are those raised in the counter-application. I have reproduced following the issues as framed in the supplementary factum of the counter applicant:

1. Does the provision in Article 14(1)(a) of the Declaration that the condominium building "shall be occupied and used only as a private single family residence and for no other purpose" prohibit Skyline from leasing their residential units for short term hotel-like use because such use is contrary to the use contemplated by the Declaration? (para. 16 s Factum)

2. Is Rule "E" of the Rules and Regulations of 1385, which prohibits commercial and/or transient use, including tenancies shorter then (sic) six months duration within the condominium building, reasonable and consistent with Article 111(1)(a) of the Declaration and the Condominium Act, R.S.O. 1998, c. 19, s. 58? (see para. 20 s Factum)

3. Should this court appoint an administrator pursuant to Section 131 of the Condominium Act 1998, with the power to administer the aforesaid Order and Declaration of this Court? (see para. 31 s Factum)

4. Does the conduct of Skyline amount to conduct that is oppressive or unfairly prejudicial to or unfairly disregards the interests of the condominium corporation? (see para. 37 s Factum)

The counter-applicant seeks an affirmative response in respect of the issues numbered (1) and (2) and the relief contemplated by the legislation referenced in the issues numbered (3) and (4).

¶ 2 One collateral issue is raised on this application and that is whether or not intervenor status should be granted to MTCC 1280, represented by Mr. Moldaver, whose interests are, in substance, congruent with those of the counter-applicant. I shall briefly address this issue at the conclusion of these reasons.

¶ 3 The following factual background frames the issues raised in this counter-application:

¶ 4 109 Front Street East, Toronto, is a building located at the southeast corner of the intersection of Front Street East and Jarvis Street. It comprises two condominium corporations, namely, MTCC 1280 and MTCC 1385, the respondent (applicant-by-counter-application) in the present application. Affiliated with the residential units are commercial and recreational units. Skyline Properties Inc., the other corporate applicants and a number of individual unit owners (respondents by counter-application), all under the name "Skyline", which owns, operates or manages a total of some 94 (more or less) units of the 189 units comprising MTCC 1385. The tension between the parties arises out of the fact that "Skyline" has been engaged in the business of leasing out those units for which it has management responsibilities for relatively short terms creating a type of transient population, akin to an hotel or apartment hotel. The complaints in this application contend that the business engaged in by Skyline is such as to change the entire character of the building from one bearing the hallmarks of "private single-family" residential accommodation to one more akin to an hotel.

¶ 5 The issues in this matter first came up before Swinton J. on May 9, 2002, when the original applicants herein sought injunctive relief, restraining MTCC 1385 and the Board of Directors from enforcing Rule "E". Rule "E", which is at Tab "B" of the Application Record of the Respondents/Applicants by counter-application, date-stamped May 8, 2002 provides, in part, as follows:

E. Owners and Tenants

1) For the purposes of Article III(1) of the Declaration, the phrase "private single-family residence" shall specifically prohibit:

(a) any "commercial" use within the units, including, but without limiting the general meaning, any of the following:

(i) the carrying on of a business;

(ii) hotel or boarding or lodging house use;

(iii) the disposition of an owner's or tenant's right to occupy the residential unit whereby the party or parties acquiring such interest or right is or are entitled to use or occupy the unit on a transient use basis or under any arrangement commonly known as time sharing;

(b) any "Transient" use of the units, including, but without limiting the general meaning, more than one (1) short-term use or occupancy of a particular unit, including any such use or occupancy by persons other than the registered owner or licensee of the unit with the exception of bona fide guests of the Owner, for a period of less than six (6) months in any particular period of twelve

(12) consecutive months.

¶ 6 The second of two notes following paragraph (1), supra furnishes what may be viewed as something of an interpretive guide. It provides as follows:

Note ...

Note: With reference to section (b) of this rule, every owner is fully entitled to lease his or her residential unit for single period of less than six months in any particular period of twelve consecutive months. As an example, a retired couple who chose to spend four or five months in the south could lease their home for the period of their absence. As another example, a business person assigned for a three- or four-month contract to a location outside the city could lease his or her home during the period of the assignment. (my emphasis)

¶ 7 Section E, 6) provides as follows:

As noted in Section D (Common Elements and Residential Units), each residential unit shall be used as a private single-family dwelling unit and for no other purpose ...

¶ 8 Section (10) provides as follows:

(10) A lease or tenancy shall be for an initial term of not less than one (1) year except that a lease may be for an initial term of less than one (1) year when, upon the expiration of the term, it is the bona fide intention of the Owner to promptly thereafter complete a sale of the unit. All tenancies for units shall be writing.

(ref. Tab B of Motion Record of the Respondent, applicant by counter application, supra)

¶ 9 Swinton J. in an endorsement, dated May 13, 2002, dismissed the application; concluding that while the applicants had met the low threshold of a serious issue to be tried, they had failed to satisfy the court in respect of the two other important criteria, namely, that they would suffer irreparable harm not compensible in damages and that the balance of conveniences was in their favour. Swinton J.'s full endorsement is to be found at Tab 4, H of the respondent's counter-application record, date-stamped August 26, 2002.

¶ 10 As of the date of this hearing, all the leases for units managed under the Skyline umbrella were, reportedly, for no less than six (6) months. The character of the publicity engaged in by Skyline historically, however, is consistent with the kind of advertisement engaged in by those engaged in the hotel or "near-hotel" kind of business. Concerns are raised by the respondents/applicants by counter-application respecting the sincerity of Skyline in its recent compliance with the 6-month minimum term in relation to its long-term intentions. The following seeming factual inconsistency forms the basis of the above concern.

¶ 11 Mr. Bluetrich, president of Skyline at the material time, swore in his affidavit, dated April 23, 2002, in support of the application for injunctive relief, that; at paragraph 22:

...

22. Had I known at the time that Skyline and the other owners purchased the units in Phase II that the rental period for units could be restricted in order to preclude the use of such units as extended stay accommodation, I would never have purchased the units or committed the individual investors to making an investment in them.

and at paragraph 69:

> 69. If Skyline is restricted to leasing the units which it manages on behalf of individual unit owners for a period of no less than 6 months Skyline's business with respect to Phase II will collapse. Based on my experience in the extended stay industry, Skyline cannot maintain occupancy rate at a level of 15-20% if it is restricted to rental periods of 6 months or more. The units at Phase II represent approximately 60% of all the suites managed by Skyline Suites. This means that if the Six-Month Rule is implemented, at any given time, Skyline Suites will be unable to lease more than half of the units it manages. In addition, the rental rates for longer period leases will be considerably lower than the rates that may be charged for shorter stays. Vacant units do not attract revenues for either the unit or owners, who depend on revenues derived from rentals to cover the carrying costs of their units, or for Skyline Suites, whose primary source of income is management fees it earns based on owners' rental revenue.
>
> (ref. Application Record, Volume 1, dated-stamped May 1, 02, Tab 2)

¶ 12 Notwithstanding the portrait of doom contained in Mr. Bluetrich's affidavit of April 23, 2002, Skyline subsequently entered into ten (10) Agreements of Purchase and Sale for condominium units at 109 Front Street East. Those agreements, spanning the dates April 30, 2002 to July 29, 2002, represented a face value of $2,780,400.00. Although not formally made exhibits, copies of the agreements were filed with the court during argument, without protest. Each of the agreements of purchase and sale, with one exception, has appended to it a Schedule "A" which contains, among others, the following three paragraphs, in similar or identical language:

> ...
>
> The Vendor agrees to provide Skyline Executive Suites Inc. with a Power of Attorney for Voting Purposes to permit Skyline Executive Suites Inc. to vote on behalf of the Vendor at all meetings of MTCC No. 1385. Said Power of Attorney shall be subject to any mortgagee rights.
>
> The Vendor warrants she has not given any Powers of Attorney to any person, party or group of persons associated with or with concerns of any nature in the building and Management of MTCC No. 1385.
>
> The Vendor agrees not to participate in any legal proceedings whatsoever against the Purchaser or any of its related companies regarding MTCC 1385 save and except for matters regarding this Agreement of Purchase and Sale and to provide written proof of this to the Purchaser.
>
> (Ref. Schedule "A" to the Agreement of Purchase and Sale, dated July 17, 2002 and represented by a purchase price of $215,800.00)

¶ 13 The above ten (10) agreements of purchase and sale were entered into not only in the light of Mr. Bluetrich's affidavit of April 23, 2002, but also in the broader context of a number of emanations from the court which, in my view, represents a view contrary to that being argued by Skyline. Among those emanations was the judgment of Madam Justice E.M. Macdonald rendered September 6, 2001 in Skyline Executive Properties Inc. v. Metro Toronto Condominium Corp. No. 1280, [2001] O.J. No. 3512. The application before E. Macdonald J., as framed by her, was "for a declaration that rules E(1)(b) and E(10) of Metro 1280 are invalid and unenforceable and contrary to section (sic) 3 and 29 of the Condominium Act, R.S.O. (1990) c. 26". The rules are summarized at p. 3 of Macdonald J.'s decision as follows:

> House rule E(1)(b) prohibits the occupancy of a unit for more than one period of less than six months in any particular period of 12 consecutive months.
>
> House rule E(10) requires that the initial term of any lease shall be for a period of not less than one year, except where the owner intends to complete a sale of the unit upon the expiry of the lease, in which case the lease may be for a term of less than one year.

E. Macdonald J. dismissed the application, citing with approval the following recent decisions of our Court: Metropolitan

Toronto Condominium Corporation No. 850 v. Oikle (1994), 44 R.P.R. (2d) 55 (Ont. Gen. Div.), Lissaman J., Metro Toronto Metropolitan (sic) [Condominium] Corporation #1170 v. Zeidan and Glen Grove Residence Inc., [2001] O.J. No. 2785; and the decision of the Ontario Court of Appeal in York Condominium Corporation No. 382 v. Dvorchik (1997), 12 R.P.R. (3d) 148. Although more detailed reference is made to those authorities later in these reasons, suffice it to say, they have been consistent in endorsing the kind of rules here in issue.

¶ 14 Among the factors relevant to the ultimate resolution of the issues raised on this application are the reasonable expectations of purchasers of units in the condominium complex. The Disclosure Statement, required under the Condominium Act, is one document which speaks to that issue. The following is indicated at page 4 of the Disclosure Statement, under the heading; "MARKETING OF BLOCk UNITS":

> The Declarant is marketing some of the units in one or more blocks to investors

and, under the caption "LEASING OF UNSOLD UNITS";

> The Declarant reserves the right to lease any unsold units in any of the Proposed Corporations.

¶ 15 At page 7, 3(h), "The Declaration", appears the following:

...

> h) Occupation and Use of Units
>
> Except as otherwise set out in the Declaration each Dwelling Unit shall be occupied and used only as a private single family residence and in accordance with the condominium's Declaration, by-laws, and rules ... The Declarant shall be entitled to maintain certain units as model suites, and may maintain project/customer service offices, displays and signs in certain units and on the common elements until all units owned by the Declarant in any of the Proposed Corporation have been sold.
>
> ...
>
> i) Leasing of Units
>
> No owner shall be entitled to lease any unit unless a covenant obliging the tenant to comply with the Condominium Act, the declaration, the by-laws and all rules of the Condominium (in the form prescribed by the Declaration) is first delivered to the Corporation. ... No owner is released from any of his obligations with respect to the unit in consequence of any lease.

¶ 16 Another document relevant to the reasonable expectations of a prospective purchaser is the "Proposed Declaration" which reads, in part, as follows:

> ARTICLE III
>
> UNITS
>
> (1) Occupation and Use - The occupation and use of the units shall be in accordance with the following restrictions and stipulations:
>
> (a) ..., each of the Dwelling Units ... shall be occupied and used only as a private single family residence and for no other purpose, ...

¶ 17 At the risk of oversimplifying the submissions of counsel for the applicant/respondent by counter-application, I think, it may be briefly summarized. Mr. Heintzman contends among other things, that the rules (in issue are unreasonably restrictive in nature and they do violence to the fundamental right of a property owner to deal freely with his/her

property. Further, all the leases now held or managed by Skyline are for a minimum term of six (6) months. It is further contended that prospective purchasers were on notice that block purchases for investment purposes were contemplated and the practice engaged in by Skyline is wholly consistent with that prior knowledge. In any event, there is no direct evidence of what the reasonable expectations of prospective purchasers were. Concerning the request for the appointment of an administrator and for the oppressive remedy relief, Mr. Heintzman submits, that there are no circumstances warranting those extraordinary remedies. Mr. Heintzman, notwithstanding his argument that the cases before Lissaman and E. Macdonald JJ. are distinguishable, has invited this court to find that MTCC 850 v. Oikle and Skyline v. MTCC 1280, supra were wrongly decided.

¶ 18 Counsel for the respondents, applicants by counter-application, argues that the impugned rule is wholly within the proper and reasonable exercise of authority of the Condominium Corporation and wholly consistent with its Declaration and the Condominium Act. Mr. Arnold contends further, that what Skyline is doing is, in fact, an attempt at "blockbusting" and that it is patent from its course of conduct that Skyline design is to take over the board of the Condominium with a view to changing the whole character of the building, Skyline's entering into ten (10) agreements of purchase and sale in the immediate wake of the posture it assumed before Swinton J. betrays its more sinister designs. Recent decisions of this Court, Mr. Arnold contents, add weight to his argument. The appointment of an administrator, Mr. Arnold submits, would serve to bring some order and stability to the disquiet that now prevails.

¶ 19 Counsel for the applicant, respondent by counter-application, has cited a number of cases, none of them in my view, directly on point except for the decision of Molloy J. in Metropolitan Toronto Corp. No. 1170 v. Zeidan, supra, canvassed more fully later in these reasons. Some of the authorities were directed to what constituted "residential" use and some to the distinction between "term" and "user". Mr. Heintzman's contention that Lissaman J. and E. Macdonald J., in the applications before them, were concerned with the validity of "rules" as opposed to Declarations, which, he submits, is the case here, is not a contention which in my view, can, in the context of this case prevail. Read intelligently, it defies logic as to why the result in the present case should be any different from that arrived at in the application before E. Macdonald J. Recognizing, however, the distinctions to be made between the various elements comprising the framework for the governance of a Condominium corporation, Molloy J., in Zeidan, supra, illuminated those distinctions. It is useful first, however, to view Molloy J.'s judgment in the context in which she framed the issue she had to address, because with the greatest respect to counsel for Skyline, he has too narrowly framed the scope of Molloy J.'s judgment. Her framing of the issue she had to decide, is, in my opinion, apropos the main issue I have been asked to determine. Molloy J. stated the issue as follows, at page 85, paragraph 16 of her reasons:

> I therefore conclude that determining whether Glen Grove's business can be characterized as an apartment-hotel is not useful to the analysis I must engage in. The issue I must determine is whether this particular use of the subject units by the respondents altered their characterization as "residential units" within the meaning of the By-law, and hence the Declaration.

¶ 20 Although Molloy J. at paragraph 23 of her reasons, concluded that the use made of the units by Zeidan and Glen Grove was a use permitted by the City of Toronto Zoning By-Law, a criterion set by the Condominium Corporation; and not in breach of s. 15 of the Condominium Declaration, she stated the following conclusion at paragraph 39 of her reasons for judgment:

> The use of the units in question as accommodation for short-term transient guests is a use that does not violate the declaration, which requires the units to be used "as residential dwelling units". The fact that a particular use complies with the declaration is not, however, the end of the matter. Otherwise, s. 29(1) would serve no purpose. The board is empowered under that provision to impose rules governing the use of units in specified circumstances. Indeed, it is quite common for condominium Boards to impose rules restricting the use of units in certain ways. Common examples are rules dealing with fire safety issues or pets. The fact that a rule cannot be inconsistent with the declaration does not mean that it cannot impose restrictions that go beyond what is provided in the declaration, as long as those restrictions are consistent with what is in the declaration. Here, the declaration requires that the units be used as residential dwelling units. Rule 7.01 [read Rule "E"] does not prevent the use of units as residential dwelling units; nor does it permit a use that is other than residential. All it does is narrow the range of residential uses that will be permitted. Further, it is not sufficiently restrictive as to negate or fundamentally alter the right of owners to lease their units to tenants generally. In my opinion, Rule 7.01 is not inconsistent with anything in the Condominium Declaration and is consistent with the characterization of the units as residential.

¶ 21 Molloy J., at paragraph 36 of her reasons outlines what, in my opinion, is an intelligent and integrated approach to interpreting the Condominium Act, at least in so far as it relates to the issues here raised.

> Mr. Spears also submitted that a rule is invalid if it deals with subject matter that could have been in the condominium declaration, even where the declaration does not actually deal with the subject. Provisions restricting owners and affecting units may be found in four sources: (1) the Condominium Act; (2) the condominium declaration; (3) the by-laws of the condominium corporations; and (4) house rules passed by the condominium board. Each of these sources of restrictions is part of a hierarchy, with the Act at the top and the house rules at the bottom. No provision in any given category can be inconsistent with a provision higher up in the hierarchical chain. Thus, restrictions in all categories must be consistent with the Act; by-laws must be consistent with the declaration and house rules must be consistent with all of the restrictions above it. This does not mean, however, that the hierarchical structure necessarily prevents a house rule from dealing with a subject matter that could have been dealt with elsewhere in the hierarchy.

¶ 22 Molloy J. then went on to conclude that Rule 7.01 was validly passed by the board and that the respondents were acting in contravention of the rule. In reaching her conclusion, Molloy J. canvassed many of the authorities cited by the parties before me. The decision of E. Macdonald J. in Skyline v. MTCC #1280, supra, had, of course, not yet been handed down. Central to Molloy's judgment also was the decision of the Ontario Court of Appeal in York Condominium Corp. No. 382 v. Dvorchik, supra, the essential gravamen of which is captured in the following excerpt from the reasons of Finlayson J.A.:

> In the absence of such unreasonableness [i.e. what is "clearly unreasonable and contrary to the legislative scheme"], deference should be paid to the rules deemed appropriate by a board ... There are, different approaches the board could have taken to regulate the keeping of pets owned by residents, and it may be that the "25 pound rule" is not the best rule or the least arbitrary. But this does not make it an unreasonable one. The threshold for overturning a board's rules reasonably made in the interest of owners is a high one. ... (paras. 5-6).

¶ 23 The above words of the Court of Appeal bears repeating and are apposite the present circumstances.

¶ 24 The deference to the condominium board's decisions which the Court of Appeal indicates is appropriate would be a sufficient ground, in my opinion, for responding affirmatively to the first two issues raised in this counter-application. There is, however, one other compelling reason for so doing. Stripped of unnecessary legal casuistry, the fundamental issue faced by my colleagues Lissaman, E. Macdonald and Molloy JJ. is, in substance, the same issue raised in the present application. There is a certain concordance in those three judgments. In such circumstances, it seems to me, the court should not seek to find, in strained analogy a reason to bring dissonance to the otherwise reasoned concordance of the court. There should be compelling reasons for so doing. No such reasons are, in my opinion, to be found in the many authorities cited. The reasons reaching the conclusion I have concerning issues 1 and 2 are all the more compelling when one considers that, to do otherwise would produce the somewhat anomalous result of having two condominium corporations. MTCC 1280 and MTCC 1385 sharing, what is to all intent and purposes, common space, and governed by identical rules, discordantly interpreted by the same court. Such a result would tend unnecessary credit to the observation that "the law is an ass".

¶ 25 I turn next to the third issue raised, and that is whether or not the present circumstances are such as to warrant the appointment of an administrator, provided for under s. 131 of the Act, reproduced following:

> 131.(1) Upon application by the corporation, a lessor of a leasehold condominium corporation, an owner or a mortgagee of a unit, the Superior Court of Justice may make an order appointing an administrator for a corporation under this Act if at least 120 days have passed since a turn-over meeting has been held under section 43. 1998, c. 19, s. 131(1): 2000, c. 26, Sched. B, s. 7(7).
>
> (2) The court may make the order if the court is of the opinion that it would be just or convenient, having regard to the scheme and intent of this Act and the best interest of the owners.
>
> (3) The order shall,

(a) specify the powers of the administrator;

(b) state which powers and duties, if any, of the board, shall be transferred to the administrator; and

(c) contain the directions and impose the terms that the court considers just.

(4) The administrator may apply to the court for the opinion, advice or direction of the court on any question regarding the management or administration of the corporation.

¶ 26 It appears, based on counsel's submissions, that s. 131 of the Act is yet to be invoked in Ontario. The British Columbia Supreme Court, however, has had occasion to deal with the province's comparable legislation. Harvey J. in Lum v. Strata Plan VR519, [2001] in paragraph 11 of his reasons, suggested the following factors to be taken into consideration by the court:

...

11. In my view after reviewing the authority available, bearing upon the question, factors to be considered in exercising the Court's discretion whether the appointment of an administrator is in the best interest of the strata corporation include:

(a) whether there has been established a demonstrated inability to manage the strata corporation,

(b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to affairs of the strata corporation,

(c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation,

(d) where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation,

(e) where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

In addition, there is always to be considered the problem presented by the costs of involvement of an administrator.

¶ 27 In addition to the factors canvassed at paragraph 11, supra, Harvey J. went on to endorse the comments of Huddart J. (as she then was) in Cook v. Strata Plan No.-50, [1995] B.C.J. No. 2882, to the general effect that "... the democratic government of the strata community should not be overridden by the Court except where absolutely necessary". It is clear from the language employed by Harvey J. that it was not his intent to create an exhaustive list.

¶ 28 Apart from the factors of cost and regard for the democratic government of a [condominium] corporation, which are probably ever present, factors (c), (d) and (e) of the five factors enumerated by Harvey J. are, in my opinion, arguably relevant in the present application. Briefly summarized, there exists a state of disequilibrium in the condominium corporation, precipitated by the obvious tension between two distinct groups having divergent interests. On the one hand, we have the owner-occupied units whose interest lies in preserving what they perceive as an atmosphere whose dominant characteristics are those of a "private single-family" dwelling. That, they maintain, is consistent with their reasonable expectations when they purchased their units, as it is with Rule "E", which represents a proper exercise of the condominium corporation's jurisdiction. On the other hand, we have the group, represented by Skyline, whose interests are principally commercial. That group are essentially absentee landlords, many of them overseas. In other words their concerns relating to the prevailing atmosphere in the condominium complex is far less immediate.

¶ 29 There is merit, in my view, in the submission by counsel for the counter-applicants that there is good cause to view with suspicion the long-term intent of the counter-respondents notwithstanding their present compliance with the 6-month minimum rule. The reason being the patent inconsistency between the posture of the counter-respondents before Justice Swinton and their subsequent venture into the acquisition of an additional ten (10) condominium units; or more precisely, the entering into agreements of purchase and sale, which included a clause clearly aimed at silencing potential opposition to

Skyline's interests.

¶ 30 For all the foregoing reasons, therefore, I am of the opinion that the circumstances warrant the appointing of an administrator, pursuant to s. 131 of the Condominium Act. If counsel are unable to agree on the term of such an appointment, or on the scope of his/her mandate, I am prepared to meet with counsel in an attempt to resolve that issue. I am also prepared to endorse Mr. Hyman, Q.C. the administrator proposed by Mr. Arnold, unless Mr. Heintzman is able to show reasonable cause why Mr. Hyman should not be approved.

¶ 31 I shall not deal with this issue relating to the oppression remedy sought by the counter-applicants because I view it as an alternative remedy to the appointment of an administrator. I am also of the view that the case for the appointment of an administrator is more compelling.

¶ 32 Finally, I turn to the question of the intervenor status sought by counsel for MTCC 1280. That question, in my view, ought to be dealt with on a practical common sense basis rather than on the basis of some abstract and academic dissertation. The appearance of counsel for MTCC 1280 was mostly a formality. She made very brief submission essentially adopting Mr. Arnold's position. The reason for MTCC 1280's interest was, of course, patent because, to all intent and purposes, the issues raised were, in substance, a reprise of the issues canvassed before E. Macdonald J. The intervenor status of MTCC 1280 is therefore recognized.

¶ 33 The counter-applicant shall have its costs of these proceedings, concerning which, if counsel are unable to agree, I shall entertain their written submissions within forty-five (45) days of the date of these reasons, which written submissions shall be exchanged for comment before submission to be me.

¶ 34 In the result therefore, an order shall issue in accordance with the foregoing reasons.

HOILETT J.

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