

## DECISION OF THE HONOURABLE Mr. JUSTICE FESTERYGA

May 24, 2006

**Re: Wentworth Condominium Corporation No. 66 and Margaret Hamilton**

E. Savas for the Applicant

R. Whitmore for the Respondent

Introduction: This is an application for an order requiring the Respondent to remove her dog from the condominium because it weighs more than 35 lbs which is the weight limit under the Pet Rules for the condominium.

The applicant takes the position that the existing pet rules were amended on May 20, 2003 effective July 5, 2003 and the respondent took possession on October 1, 2004 with notice of the rule. However, she has refused to remove the dog "Kenobi".

The respondent takes the position that the amendment was not properly passed, it is not reasonable and is protected by reason of the "granfathering" provision in the alleged rules.

Overview: I find the documentation surrounding the passing of the rule change is sloppy to say the least.

Findings of Fact: The rule change was discussed at a Board meeting May 6, 2003. However the draft rule needed some minor changes so that a final draft could be submitted to the Board for approval. There was a consensus on May 6, 2003 that the rule was acceptable in principle by the Board.

The next time the rule came up for discussion was May 20, 2003. There is no mention in the minutes of that meeting of May 20, 2003 of a mover and seconder nor a vote to pass the final amended rule. The Board usually has a mover a seconder and a vote as can be seen from past minutes.

I find that there was confusion at that meeting because members were preoccupied with financial matters. I also find the recorder of the minutes, the manager of this building, was not in the room when the rule was discussed. I am satisfied that a motion was made and a vote taken by a show of hands to pass the amended rule. I find there was unanimous agreement to pass the rule on a balance of probabilities. I rely on evidence other than the minutes to find the rule passed. That evidence is the sworn evidence referred to above, the subsequent mailing of the required documents to the owners as required by section 58 of the Condominium Act and item number 10 of the minutes of the board on June 25, 2003. This is clear and cogent evidence.

I find that the Board has complied with section 58 of the Act with respect to notice requirements and an effective date of July 5, 2003.

I find the Board did not receive any requisition as referred to in section 58(7) of the Act.

I find that the respondent took title to her unit on October 1, 2004 and she had notice of the rule with the dog weight restriction before she took possession of the unit. She had the opportunity to void the agreement of purchase and sale but failed to do so. It is conceded that Kenobi weighs more than 35 pounds. I find by keeping Kenobi on the premises, she is in violation of the Pet Rule as amended.

Reasonableness of the Rule: I am bound by our Court of Appeal decision in *York Condo. No. 382 v. Dvorchik* [1992] O.J. No. 1152. I pay deference to the Board in making the rule and I will not substitute my opinion on the propriety of it unless clearly unreasonable. I find the rule is not clearly unreasonable when I consider the complaints the owners have had about large dogs being on the condominium premises.

Grandfather clause: I find that it clear that the intent of that clause is to allow the dogs over 35 lbs to remain if they were there before July 5, 2003. This clause has no application here.

Conclusion: Order to issue as requested in paragraphs one, two and three of the Application Record.

Costs: I withhold costs from the successful applicant because it made mistakes in recording the passing of the rule changes on May 20, 2003. That made this Application necessary. No order as to costs to any of the parties.

Signed

*Mr. Justice Festeryga*