COURT OF APPEAL FOR ONTARIO

CITATION: Metropolitan Toronto Condominium Corporation No. 723 v. Reino, 2018 ONCA 223

DATE: 20180307

DOCKET: C63859

Doherty, MacFarland and Paciocco JJ.A.

BETWEEN

Metropolitan Toronto Condominium Corporation No. 723

Applicant (Appellant)

and

Dante Reino

Respondent (Respondent in Appeal)

DOCKET: C63860

AND BETWEEN

Dante Reino

Applicant (Respondent in Appeal)

and

Metropolitan Toronto Condominium Corporation No. 723

Respondent (Appellant)

Derek J. Bell and Brendan Clancy, for the appellant

Mark H. Arnold, for the respondent

Heard and released orally: February 23, 2018

On appeal from the judgment of Justice Jane Ferguson of the Superior Court of Justice, dated April 26, 2017.

REASONS FOR DECISION

[1] The issue raised on this appeal is whether a condominium corporation having issued a prior "clean" status certificate in relation to a unit will, in the event it subsequently discovers

matters it believes should be disclosed, be estopped from noting such matters in a subsequent status certificate requested by the owners of the unit.

[2] The facts are not much in dispute. The respondent Dante Reino purchased the condominium unit from his mother in 2013. He requested a status certificate at that time and was issued a "clean" certificate.

[3] When Mr. Reino decided to sell his unit in 2016 he requested a status certificate from the condominium corporation which he intended to use to market his condominium. The certificate he received noted at s. 12 thereof:

> The Corporation has no knowledge of any circumstances that may result in an increase in the common expenses for the unit except: (1) the unit is in breach of s. 18(6) of corporations declaration amended, which provides that no dwelling unit owner shall make any change or alteration to the layout or configuration of any dwelling unit without the prior written consent of the Board of Directors. In this regard the unit configuration has been altered so as to add a second bedroom and the kitchen has been relocated without the consent of the Board of Directors. The policy of the Board of Directors is generally not to approve any changes that tend to add to the occupant load factor within the building. This circumstance may result in the corporation taking steps to remove the alteration and restore the unit to its original layout and the costs of the corporation's actions in this regard being added to the common expenses attributable to the unit.

[4] The appellant acquired his unit in 2013 from his mother who had owned the unit from 2004. At the time of her purchase she had received a "clean" certificate from the Condominium Corporation as her son did in 2013. The respondent's evidence, accepted by the application judge, was that neither he nor his mother had carried out any alteration to the unit as described in para. 12. The configuration of their unit was unchanged during their occupancy. If the configuration was changed from the original layout it must have been carried out prior to their occupancy. Despite the fact that representatives of the condominium corporation had been in the unit numerous times over the course of the Reino's occupancy – no one ever mentioned that the layout had been altered.

[5] Section 18 (b) of the amended declaration provides:

> Subject to the provisions of Section 17 and Section 19 hereof, no dwelling unit owner shall make any change or alteration to the layout or configuration of any dwelling unit without the prior written consent of the Board of Directors.

[6] Relying on s. 76(6) of the Act which provides:

> The status certificate binds the corporation, as of the date it is given or deemed to have been given with respect to the information that it contains or is deemed to contain as against a purchaser or mortgagee of a unit who relies on the certificate.

[7] The application judge concluded that the Act was clear and unequivocal and that the condominium corporation

- ...is bound to its clean and clear status certificates dated August 20, 2004 and October 13, 2013. It cannot rely on the alleged breach in its November 7, 2016 status certificate.

- ...and is estopped from its November 7, 2016 status certificate as it is currently written.

[8] She then granted the respondent the relief sought in his Notice of Application including:

- a declaration that neither sections 12.1 nor 23 of the status certificate issued November 7, 2016 binds the applicant nor Unit 16, level 17 which is the unit owned by the applicant;

- an order directing the respondent to remove Sections 12.1 of the November 17, 2016 status certificate;

- an order to amend s. 23.1 of that certificate by removing the words:

  > However, the unit layout has been altered without the prior consent of the Board of Directors of the corporation contrary to the declaration of the corporation. Please see Paragraph 12 for details.

- an order directing that the condominium corporation issue a clear status certificate pursuant to s. 76 of the *Condominium Act* in relation to the subject unit.

[9] The *Condominium Act* is among other things consumer protection legislation. The purpose of a status certificate is obvious – it is to bring to the attention of a prospective purchaser or mortgagee matters which may be of concern to them when contemplating the purchase of a unit.

[10] The certificate is by s. 76(6):

> – binding on the corporation as of the date it is given ... as against a purchaser or mortgagee of a unit who relies on the certificate.

[11] We agree that the condominium corporation is bound vis-à-vis the respondent Mr. Reino by the clean certificate it provided to him when he acquired the unit from his mother in 2013. That said, it does not follow that the condominium corporation is thereafter estopped from issuing anything but a "clean certificate" in relation to a unit where it has previously provided a clean certificate.

[12] If a condominium corporation becomes aware, after issuing a clean certificate, of a circumstance that is required to be disclosed by virtue of s. 76 or the regulations, it must when it next issues a certificate include such information on it.

[13] This does not change the fact that it will still be bound by its earlier certificate vis-à-vis the purchaser at the time or his mortgagee.

[14] Here, where the condominium corporation discovered that the unit layout had been switched between the time it issued its 2013 certificate and when it issued its 2016 certificate – it was obliged to include that information in the certificate. To do otherwise would be misleading to a prospective purchaser.

[15] The respondent has a remedy if the condominium corporation negligently issued the clean status certificate to him, to his detriment. He can sue the condominium corporation for any diminution in the value of his unit by reason of any improper disclosure that may have occurred – provided he does so before the limitation expires in November of this year. In this sense, he is entitled to rely on the Certificate issued to him in 2013 and the condominium corporation is bound by it. If there was, in fact, negligence on the part of the condominium corporation it would be determined in such action.

[16] It makes no difference that the respondent rather than a prospective purchaser asked for the certificate. The purpose for which the respondent asked for the certificate was to market his unit for sale. A "clean" certificate in these circumstances would be misleading to a prospective purchaser.

[17] The application judge erred in concluding that the condominium corporation was in effect estopped from issuing anything other than a clean certificate in the circumstances of this case.

[18] Whether or not there are other proceedings as a result of this and the issue arises with respect to whether or not the condominium corporation was negligent, is a matter for another day and it is not decided by this court.

[19] The appeal is allowed and the orders of the application judge dated April 26, 2017 are set aside.

[20] We see no reason why costs should not follow the result as it the usual order.

[21] Costs of the appeal to the appellant fixed in the sum of $17,500 inclusive of disbursements and HST.

[22] The application judge fixed the costs below in the sum of $14,125 inclusive of disbursements and HST. In view of the result in this court, those costs are also awarded to the appellant for a total award to the appellant in the sum of $31,625.

"Doherty J.A."

"J. MacFarland J.A."

"David M. Paciocco J.A."