COURT OF APPEAL FOR ONTARIO

CITATION: White Snow and Sunshine Holdings Inc. v. Metropolitan Toronto Condominium Corporation No. 561, 2018 ONCA 196
DATE: 20180227
DOCKET: C64155

2018 ONCA 196 (CanLII)

Doherty, MacFarland and Paciocco JJ.A.

BETWEEN

White Snow and Sunshine Holdings Inc.

Applicant (Appellant)

and

Metropolitan Toronto Condominium Corporation No. 561

Respondent (Respondent)

Morris Cooper, for the appellant

Joshua Milgrom, for the respondent

Heard and released orally: February 23, 2018

On appeal from the judgment of Justice Thomas R. Lederer of the Superior Court of Justice, dated July 28, 2017.

REASONS FOR DECISION

[1] The appellant corporation, White Snow and Sunshine Holdings Inc. ("White Snow") owns the only two commercial units in a residential condominium building. The condominium corporation is the respondent, Metropolitan Toronto Condominium Corporation No. 561.

[2] White Snow is aggrieved that only owners of condominium dwelling units and their guests can use the building's recreational common elements, including a swimming pool, a gymnasium, a library, and a squash court. White Snow wants its employees to be able to enjoy those facilities, which its commercial condominium fees help to pay for.

2018 ONCA 196 (CanLII)

[3] After failed efforts to persuade the condominium board to change the rules to allow its employee's access to the recreational common elements, White Snow brought an application under s. 109(3) of the *Condominium Act*, S.O. 1998, c. 19, asking the Superior Court to amend the MTCC's Declaration. White Snow argues that the access restriction contained in Article I(7) should be removed because O. Reg. 48/1 requires all exclusive-use areas within the condominium to be contained in Schedule F to the Declaration, and Schedule F of the respondent's Declaration does not specify that the recreational common elements are for the exclusive use of dwelling unit holders. White Snow argues that, because this restriction is not specified in Schedule F, it is inconsistent with the *Condominium Act.*

[4] The application judge dismissed White Snow's application. He held that the restriction of recreational common elements to dwelling unit holders does not have to be listed in Schedule F. Only "common elements that are to be used by the owners of one or more designated units but not by all owners", as provided for in *Condominium Act*, s. 7(2)(f), needs to be listed in Schedule F. This would

include things such as terraces that are set aside for the exclusive use of particular units. In contrast, things such as the exclusive use by dwelling unit holders of recreational facilities are provided for in s. 7(4)(b), as "restrictions with respect to … the use of … common elements", and s. 7(4)(b) restrictions do not have to be specified in Schedule F. As a result, the Declaration is not inconsistent with the *Condominium Act* and does not require amendment.

2018 ONCA 196 (CanLII)

[5] White Snow argues in this appeal that the application judge erred in law in giving this interpretation to the statutory provisions. It also argues that the application judge misdirected himself by using a zoning by-law to interpret the statute. The City of Toronto site-specific zoning by-law at issue requires recreational space to be provided for residents of the building.

[6] We would dismiss the appeal relating to the correct interpretation of the relevant provisions of the *Condominium Act*, for the reasons of the application judge, with which we agree.

[7] We would also dismiss the appeal relating to the application judge's use of the zoning by-law. In our view, the application judge did not use that zoning by-law to interpret the *Condominium Act*. He used it explain the proper interpretation of the impugned Declaration. He committed no error in doing so.

[8] The appeal is dismissed. Costs in the amount of $10,000 inclusive of disbursements and applicable taxes are awarded to the respondent.

"Doherty J.A."
"J. MacFarland J.A."
"David M. Paciocco J.A."

2018 ONCA 196 (CanLII)