Claim No: SCCH - 484490

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Greenwood Lane Inc. v. Halifax County Condominium Corporation #19*, 2019 NSSM 14

BETWEEN:

GREENWOOD LANE INC.

Claimant

- and -

HALIFAX COUNTY CONDOMINIUM CORPORATION #19

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on March 5, 2019

Decision rendered on March 7, 2019

APPEARANCES

For the Claimant	Bonnie Kostal, Director of Finance Susan Graham, Property Manager
For the Defendant	Robbin Cotton, Director Carol Smillie, Director

BY THE COURT:

[1] The Claimant is a well-known property management company. The Defendant is the condominium corporation for a large condominium building on Spring Garden Road in Halifax.

[2] The Claimant was until September 1, 2018 the property manager for the Defendant, pursuant to an agreement dating back to 2010, as amended from time to time.

[3] That agreement allows the Defendant to terminate the Claimant's services at any time by giving 90 days notice in writing.

[4] On July 11, 2018, the Board of Directors of the Defendant decided to terminate the Claimant as property manager, and replace them with another company. They served a written notice terminating the agreement as of September 1, 2018, when their new manager was to take over.

[5] The amount of notice given was 51 or 52 days, depending on how one calculates it. The Defendant takes the position that it was entitled to terminate on 60 days notice, not 90 days, and concedes that it would owe the Claimant a few days of management fees. The Defendant draws its authority for giving the lesser amount of notice from s.14(1B) of the *Condominium Act*, which it says overrides the 90 day period in the management agreement.

[6] There are no facts seriously in dispute. The case turns entirely on an interpretation of s.14 of the Condominium Act, and in particular s.14(1B) thereof. The relevant parts of section 14 read as follows:

> 14 (1) The objects of the corporation are to manage the property and any assets of the corporation.
>
> (1A) Notwithstanding subsection (2), a corporation may not enter into an agreement for the management of the corporation that has a term that exceeds two years.
>
> (1B) Notwithstanding any term of an agreement between a corporation and a person for the management of the corporation that was entered into before the board of directors was elected in accordance with this Act, the agreement may be terminated upon sixty days' notice without any legal liability to the corporation.
>
> (1C) Notwithstanding subsection (1A), upon a vote of owners representing at least sixty-six and two-thirds per cent of the common elements that has occurred after the board of directors was elected in accordance with this Act authorizing a contract longer than two years, the corporation may enter into a management contract in excess of two years.
>
> (2) The corporation shall have all corporate powers and all corporate capacities necessary to enable it to do all such acts and things as are incidental or conducive to or consequential upon the attainment of its objects as set out in subsection (1) including, without limiting the generality of the powers and capacities of the corporation, but subject to this Act, the declaration and the by-laws, the power to lease any part of the common elements.

[7] The Claimant contends that section 14(1B) is of no help to the Defendant, because it does not mean what they think it means. The Claimant says that the section is meant to assist a condominium corporation by overriding a longer termination period contained in a management agreement that may have been entered into by the original developer (declarant), or by the directors appointed by the developer prior to the members (owners) taking over the functions of the board.

[8] This section was not part of the *Condominium Act* until a set of amendments was introduced by the government in 2009. In explanatory notes that accompanied the first reading of the legislation, the government wrote that this section *"allows the board to cancel a management agreement on 60 days' notice if the agreement was entered into before the board was elected ..."*

[9] I cannot say that this explanatory note adds a lot to my understanding. It can still be read both ways.

[10] The question comes down to the meaning of the words *"before the board was elected in accordance with this Act."* The Defendant says the board of directors in place at the time the notice of termination was given, is not the same board that was in place at the time the contract was entered into, new directors having been elected earlier that year. Accordingly, it says, the "new" board had the right to terminate on 60 days notice.

[11] I cannot accept that interpretation. I find particularly significant the words *"in accordance with this Act."* The *Act* itself has specific provisions for how the initial board of directors is elected after the condominium is registered:

> **Initial board of directors**
>
> 14B (1) The declarant shall notify, in the prescribed form, the Registrar of the names of the board members appointed by the declarant at the time the declaration and description are submitted for registration and such people are the initial board of the directors of the corporation.
>
> (2) The board of directors of a corporation shall be elected at a general meeting of the members, which meeting must be held within forty-five days of the date in which the declarant ceases to own more than fifty per cent of the units.

[12] The *Act* is silent on how subsequent elections to the board are to take place. It would appear that these procedures are left to the bylaws:

> 23 (1) The corporation, by a vote of members who own at least sixty per cent of the common elements, may make by-laws
> .....
> (f) respecting the board;

[13] As such, it seems most probable to me that the *Act* in s.14(1B) is referring to the board elected at that first general meeting of the members. That is the board "*elected in accordance with this Act."* Any subsequent elections would be a continuation of that board, or (arguably) a board elected pursuant to the bylaws.

[14] Legislation is typically amended to address a mischief. While the purpose is not obvious on its face, the Claimant's explanation was that some declarants or developers were entering into friendly management deals which would then be binding on the newly elected board. This provision, plus the one in s.14(1A) limiting terms of management agreements to two years, ensured that newly constituted boards could shed these contracts entered into before they were constituted as the first fully independent board.

[15] If the Defendant's explanation were correct, it would provide every board with the ability to override a contractual termination period so long as the contract had been entered into by a previous iteration of the board. If that were the case, there would be no reason to use the words "*elected in accordance with this Act."* It could simply have read "entered into before the election of the

current board", or "entered into by a previous board." Or like s.14(1A) it could have achieved the purpose without any mention of the election of a board.

[16] It is an elementary principle of statutory instruction that an interpretation should be favoured that gives all of the words meaning, over an interpretation that makes some of words meaningless or surplus.

[17] It should be noted that once the election of a board takes place, all current and future board members are unit owners and their decisions reflect the democratic will of the owners. Their choices of property manager and terms of agreements that they negotiate are theirs to make. Had the legislature wished to protect them from their own decisions by making it easier or less costly for them to terminate agreements, it could have done so with simple language that directed such a result.

[18] Accordingly, I find that the Defendant gave inadequate notice and the Claimant is entitled to judgment for the balance of 90 days. The Defendant did not quarrel with the Claimant's calculation of fees totalling $6,124.76 plus HST for a total of $7,043.47. The Claimant is also entitled to its filing fee of $199.35 plus $103.50 for serving the claim, for a total of $7,346.32.

Eric K. Slone, Adjudicator