

 **Adam v. Halifax County Condominium Corp. No. 267, [2019] N.S.J. No. 426**

Nova Scotia Judgments

Nova Scotia Small Claims Court

Adjudicator M.J. O'Hara

Heard: August 6, 2019.

Judgment: September 16, 2019.

Claim No. 489427

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Between Ganim Adam, Claimant, and Halifax County **Condominium** Corporation No. 267, Defendant

(18 paras.)

Counsel

Claimant — Ganim Adam.

Defendant -- Harold Dunstan, Treasurer of Defendant.

DECISION and ORDER

ADJUDICATOR M.J. O'HARA

- 1 This is a claim by an owner of a **condominium** unit against the **Condominium** Corporation in respect of charges imposed by the Defendant against the Claimant.
- 2 The Defendant states that it wishes to refer the matter to arbitration under the **Condominium** Act, [R.S.N.S. 1989, c. 85](#) and, being a mandatory process for the resolution of disputes between an owner and a **condominium** corporation, the Small Claims Court would not have jurisdiction to deal with the matter.
- 3 In making the submission, the Defendant refers to the decision of Adjudicator Barnett in ***VanAmburg v. Halifax County Condominium Corporation No. 267***, 2007 NSSM.23.
- 4 In that case Adjudicator Barnett referred to Section 33 of the **Condominium** Act, [R.S.N.S. 1989, c. 85](#). That section is now numbered as 33A, and reads as follows:

Arbitration

33A (1) Except as provided by this Section, the Commercial Arbitration Act applies to every arbitration carried out pursuant to this Section.

(2) *Notwithstanding the Commercial Arbitration Act, where*

- (a) *the corporation and an owner of a unit that is part of the property managed by the corporation;*
- (b) *the corporation and any person who has agreed with the corporation to manage the property;*
- (c) *the corporation and any other corporation created pursuant to this Act;*
- (d) *the corporation and the occupier of a unit that is part of the property managed by the corporation;*
- (e) *an owner of a unit and the occupier of any other unit that is part of the same property that includes the unit of the owner; or*
- (f) *two or more owners of units that are part of the property managed by the corporation,*

are parties to a dispute on any matter to which this Act applies, other than termination of the property and those matters for which regulations have been made pursuant to Section 33, but also including a dispute between a board and an owner of a unit that is part of the property managed by the corporation, as to whether a decision or any proposed action by the board is prejudicial to the property or the corporation, any of the parties may give to the other party or parties and to the Registrar notice that the party giving the notice intends to have the dispute arbitrated by a single arbitrator appointed by the Registrar and, when the notice is given, the parties are deemed, for the purpose of the Commercial Arbitration Act, to have entered into a written agreement to submit the differences between or among them arising from the dispute to arbitration by a single arbitrator appointed by the Registrar pursuant to this Act.

(3) Where a notice is given to the Registrar pursuant to subsection (2), the Registrar shall appoint the arbitrator from a list of persons prescribed by the regulations, and the parties are deemed to have consented to the use of mediation by the arbitrator.

(4) Service of a notice pursuant to this Section may be made by personal service, registered mail or substituted service as prescribed by the regulations.

(5) Where a notice is mailed pursuant to subsection (4), it is deemed to be given within seven days after it is mailed, unless the contrary is proved.

[Underlining added]

5 As will be seen, where an owner of a unit and the Corporation are parties to a dispute on any matter to which the Act applies, any of the parties may give notice to the Registrar and the other party, that they intend to have the dispute arbitrated by a single arbitrator appointed by the Registrar.

6 In basic terms, this arbitration process established under the Condominium Act is intended to provide a specific and dedicated forum for resolving disputes that may arise between condominium owners and a condominium corporation or between other parties involved in the condominium scheme of ownership.

7 In the **VanAmburg** case, Adjudicator Barnett dealt with the issue in a comprehensive decision which I fully concur with.

8 The dispute in question here is a matter to which the Act applies. In so saying, I note that the claim here is for reimbursement for charges that the Claimant says he was coerced into paying by the Defendant. These charges include:

- * Overtime for the superintendent in connection with a lost or malfunctioning key, presumably for the parking garage
- * Fees for garbage disposal and garbage on balcony;
- * Repairs to garbage room damage;
- * Replacement of the Claimant's unit window undertaken by the Defendant.

9 In its written defence, the Defendant ("HCCC No. 267") states that its Declaration and By-Laws have been duly registered with the Registrar of **Condominiums** in accordance with the **Condominium Act**, and by purchasing a unit in HCCC No. 267, the Claimant has consented to abide by the Declaration and By-Laws.

10 The Defendant further states that the Board of HCCC No. 267 has, from time to time, authorized repairs under Section 35(6) of the **Condominium Act**, it has the right to a lien under Section 35(10), and has the right in accordance with Act, Declaration and By-Laws to charge interest on monies owed to it by an owner.

11 From a cursory review of the **Condominium Act**, I would note the following provisions of potential relevance to this matter:

Contents and amendment of declaration

11 (1) A declaration shall not be registered unless it is executed by the owner or owners of the land and interests appurtenant to the land described in the description as shown in the report on title and unless it contains

(c) provisions respecting the occupation and use of the units and common elements;

...

(l) a specification of any allocation of the obligations to repair and to maintain the units and common elements

Objects and powers

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14 (1) The objects of the corporation are to manage the property and any assets of the corporation.

By-laws

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

(a) governing the management of the property;

(b) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units;

(c) governing the use of the common elements;

(d) regulating the maintenance of the units and common elements;

(e) governing the use and management of the assets of the corporation;

(f) respecting the board;

(g) specifying duties of the corporation;

(h) regulating the assessment and collection of contributions towards the common expenses;

(i) respecting the conduct generally of the affairs of the corporation.

(2) The by-laws shall be reasonable and consistent with this Act, the Human Rights Act and the declaration.

(2A) By-laws adopted by a corporation pursuant to subsection (1) are not required to contain provisions found in the corporation's declaration, but may provide additional details, if such details are not inconsistent with the declaration.

Duties of owners

- 30 (1) *Each owner is bound by and shall comply with this Act, the declaration and the by-laws.*
- (2) *Each owner has a right to the compliance by the other owners with this Act, the declaration and the by-laws.*
- (3) *The corporation, and any person having an encumbrance against any unit and common interest, has a right to the compliance by the owners with this Act, the declaration and the by-laws.*

Financial provisions

- 31 (1) *The corporation*
- (a) *shall establish an operating fund for the payment of the common expenses to which fund the owners shall contribute in proportions specified in the declaration;*
- (c) *shall assess and collect the owner's contributions towards the common expenses and the reserve fund established by the corporation pursuant to subsection (1A) and any contingency fund established by the corporation pursuant to subsection (4A) as regulated by the declaration and the by-laws;*
- (d) *shall pay the common expenses;*
- (e) *has the right to recover from any owner*
- (i) *the unpaid amount of any assessment,*
- (ii) *any sum of money expended by it for repairs to, or work done by it or at its direction in complying with any notice or order by a competent public or local authority in respect of that portion of the building comprising the unit of that owner, and*
- (iii) *any sum of money expended by it for repairs done by it pursuant to subsection (6) of Section 35 for the owner;*
- ...
- (6) *Where an owner defaults in the owner's obligation to pay to the corporation any amount the corporation has the right to recover pursuant to clause (e) of subsection (1), the corporation has a lien for the unpaid amount against the unit and common interest of that owner.*

Maintenance and repairs

- 35 (1) *For the purposes of this Act, the obligation to repair after damage and to maintain are mutually exclusive, and the obligation to repair after damage does not include the repair of improvements made to units after acceptance for registration of the declaration and description.*
- (2) *Subject to Section 36, the corporation shall repair the units and common elements after damage.*
- (3) *The corporation shall maintain the common elements.*
- (4) *Each owner shall maintain that owner's unit.*
- (5) *Notwithstanding subsections (2), (3) and (4), the declaration may provide that*
- (a) *subject to Section 36, each owner shall repair that owner's unit after damage;*
- (b) *the owners shall maintain the common elements or any part of the common elements; or*
- (c) *the corporation shall maintain the units or any part of the units.*
- (6) *The corporation shall make any repairs that an owner is obligated to make and that the owner does not make within a reasonable time.*
- (7) *An owner shall be deemed to have consented to have repairs done to the owner's unit by the corporation pursuant to this Section.*
- (8) *The corporation has the right to recover all costs, including insurance deductibles, paid by the corporation for any repairs that the corporation makes to a unit pursuant to subsection (6).*

(9) The corporation may recover any insurance deductible in respect to damage to any unit or common elements from an owner if that owner is responsible for the damage.

(10) Where an owner defaults in the owner's obligation to pay the corporation any amount the corporation has the right to recover pursuant to subsections (8) and (9), the corporation has a lien for the unpaid amount against the unit and the common interests of that owner.

12 This is not intended to be an exhaustive enumeration of potentially relevant provisions. Rather, it is provided to show that the prerequisite condition that the disputes in question are matters to which the **Condominium Act** applies. In my view, they are.

13 It follows therefore that once one of the parties gives the required notice to the Registrar, the parties are deemed to have entered into a written agreement to submit the differences between or among them arising from the dispute to arbitration by a single arbitrator appointed by the Registrar pursuant to this *Act*.

14 However, until such a notice is made, the matter remains at large and may, in my view, be dealt with through the Small Claims Court process.

15 This issue was noted by Adjudicator Barnett at paragraphs 39 to 43 in the **VanAmberg** case in which he provided the parties with four weeks to give formal notice pursuant to the *Act* and Regulations and specifically under Form 23 of the Regulations -- "Notice of Intention to Submit Dispute to Arbitration."

16 In my view the same approach should govern here.

17 Therefore, I will give the Defendant four weeks from the date of this decision, i.e. until October 14, 2019. Failing receipt of a confirmation, a copy of Form 23 -- Notice of Intention to Submit Dispute to Arbitration, the Claimant may proceed to contact the Clerk of the Small Claims Court to set this matter down for hearing on the merits.

18 If, however, the confirmation of Notice of Intention to Submit Dispute to Arbitration is received by that date, then this matter stands dismissed for want of jurisdiction.

DATED at Halifax, Nova Scotia, this 16th day of September, 2019.

ADJUDICATOR M.J. O'HARA