CITATION: Toronto Standard Condominium Corporation No. 1704 v. Fraser, 2020 ONSC 5430
COURT FILE NO.: 20-00644905-0000
DATE: 20200910

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1704	)	*Shawn Pulver and Chris West*, for the Applicant
Applicant	)	
– and –	)	
SHARON FRASER	)	
Respondent	)	*Paul Rausch*, for the Respondent
	)	
	)	**HEARD:** September 8, 2020

REASONS FOR DECISION
(Application under s. 134 of the *Condominium Act,* 1998)

OVERVIEW

[1] The Toronto Standard Condominium Corporation No. 1704 brought an application to prevent owner Sharon Fraser from continuing repairs to her condominium unit contrary to its policy (the Policy).

[2] In November of 2019, Ms. Fraser's unit was flooded during plumbing repairs. In early 2020, she requested permission to repair the damage to the floors in her unit. The Corporation refused permission because of missing documentation about the level of soundproofing in the proposed floor coverings.

[3] In May of 2020, the Corporation implemented the Policy to restrict repairs to units in response to COVID-19 concerns. Between May and July of 2020, Ms. Fraser's further applications to repair her floors were declined under the Policy.

[4] In July, Ms. Fraser told the Corporation that she was going ahead with the repairs. Despite warnings from counsel to the Corporation, she retained a contractor who began the work on July 21, 2020. The Corporation went to court to halt the repairs. Ms. Fraser ceased the repair work on July 23, 2020. The repairs remain incomplete.

ISSUES

[5] The issues on this application are as follows:

i. Is the Corporation's Policy valid and enforceable?

ii. Were the Corporation's actions in enforcing the Policy, "unfair, unreasonable, or prejudicial toward Ms. Fraser?

iii. Should Ms. Fraser's repair work be found to be an emergency or essential service and allowed to proceed?

iv. Should Ms. Fraser pay the costs of this application?

BACKGROUND

The Flood and Damage to Ms. Fraser's Unit

[6] Ms. Fraser purchased a condominium in Toronto in 2014. The condominium building is managed by the Corporation. In November of 2019, there was a flood in Ms. Fraser's unit caused during some plumbing work that was arranged by the Corporation. The contractor used fans to dry the area, but there was damage done to the carpet, the underpadding and to the tiles in one of the bathrooms. Ms. Fraser unsuccessfully tried to have the Corporation, the contractor or her insurance company take responsibility for the damage to her unit.

[7] The tenants in the unit (Ms. Fraser's daughter and partner) were not able to use the second bedroom or ensuite bathroom because of the flood damage. They have used the first bedroom and bathroom since the flooding. Due to her father's illness, Ms. Fraser stays in the condominium two to three times a week to take him to medical appointments.

[8] In February of 2020, Ms. Fraser sent a renovation request to the Corporation through the property manager for the building.

[9] Ms. Fraser was told that the proposed renovation request did not meet the requirements for soundproofing flooring. She submitted an amended request in March of 2020. According to Ms. Fraser she received no response to this amended request. The evidence from the property manager was that she called Ms. Fraser to tell her that the request was missing testing documentation and was unsigned. Given the events that followed, this discrepancy need not be resolved. Shortly after, the COVID-19 pandemic became known and Toronto

responded by closing institutions, businesses and instituting social distancing to avoid the spread of the virus.

The Corporation's COVID-19 Repair Policy and Ms. Fraser's Response to the Policy

[10] During March and April of 2020, members of the Board of the Corporation attended information sessions concerning condominium safety. The Corporation's condominium building includes residents in high risk categories, by virtue of age or prior medical conditions. In May of 2020, the Corporation sent a notice of the Policy to its unit-holders. The notice advised owners that several projects including "in-suite repairs" were being postponed due to COVID-19. The notice read, "Currently, contractors are not allowed to work in-suite unless it is considered emergency or essential services."

[11] Ms. Fraser asked to repair the damage in her unit after the Policy was put in place. The Corporation did not approve the renovations. On July 6, 2020, Ms. Fraser wrote to the property manager to say that she would begin the renovations on July 13. Ms. Fraser attached new paperwork describing the proposed repairs. The property manager reminded Ms. Fraser of the policy of no in-suite repairs unless for an emergency or essential service.

[12] On July 9, 2020, the Corporation posted a second notice to the owners which read:

> Dear Residents:
>
> As stated in the notice posted on May 11, 2020 and placed on the portal on or about May 11, 2020, contractors are not allowed to work in-suite unless it is considered an emergency or essential service. Therefore, any and all renovation requests that do not meet that criteria are currently on hold.
>
> With the COVID-19 Pandemic, there is concern for the safety and security of our residents to permit additional unnecessary people in the building as well as the reasonable expectation of residents for quiet enjoyment of their property with so many people being required to work from home these days.

[13] Ms. Fraser made further written requests to the Corporation to do the work in her unit. She was told she could not do the work unless she provided documents that supported the necessity of the work under the terms of the Policy. Eventually, Ms. Fraser wrote to say she intended to start the work on July 21, 2020. The work started on that day. Contractors entered the building at Ms. Fraser's direction to work in her unit. The Corporation initiated legal proceedings. By the time of a case conference on July 23, 2020, Ms. Fraser had stopped the work.

[14] I turn to the four issues raised by this application.

I. Is the Condominium Corporation Repair Policy valid and enforceable?

[15] The Corporation submits that it was required to respond to the novel issues raised by the COVID-19 pandemic. It submits that the Policy against non-emergency repairs was reasonable in that it limited the entry of contractors into the building. The Corporation points to section 58 of the *Condominium Act* which permits a condominium board to make or amend rules to promote the safety, security and welfare of owners and residents. The Corporation relies on the proposition that unless a rule is clearly unreasonable or contrary to the legislative scheme, the court should not intervene: *York Condominium Corp. No.* 382 *v. Dvorchik*, [1997] O.J. No. 378 at paras 4-5.

[16] The Corporation also submits that the policy is reasonable given that section 117 of the *Act* requires: "No person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual."

[17] Ms. Fraser does not challenge the ability of the Corporation to make rules or that the rules are to be granted deference if they are reasonable. Ms. Fraser argues that in her case, the Corporation was not been reasonable in waiting until May of 2020 to put the Policy in place. She submits that while the May 11, 2020 Policy may have been reasonable on that date, by May 19, 2020, when the Province of Ontario moved to Stage 1 of re-opening, which permitted construction, repairs and renovations on properties including residential properties, the Policy was no longer reasonable.

[18] Ms. Fraser argues in response to the relaxing of the provincial standards for reopening businesses and services, the Corporation ought to have reviewed and revised its Policy. Ms. Fraser argues that the Corporation's failure to review the Policy was unreasonable. She submits the Policy has prejudicially affected her ability to offer full enjoyment of the unit to her tenants because she has been unable to complete the repairs to the second bedroom and ensuite bathroom.

[19] I conclude that the Policy was well within the range of reasonable responses to the global pandemic. The Court of Appeal stated in *Dvorchik* at para 6, "The threshold for overturning a board's rules reasonably made in the interests of unit owners is a high one." In May of 2020, the Corporation gave notice of the Policy to all unit-holders of its decision to limit access to the building from contractors as part of its measures against COVID-19, both to reduce the potential spread of the virus, and to respond to the fact that many residents needed to work from home. The Board implemented the Policy after educating itself on health and safety responses in condominiums and reviewing public health information. The Policy was repeated and explained in greater detail in July to all residents. The context for the Policy is the unprecedented societal response to a virus which is contagious and fatal particularly to those in high-risk categories. Although the Province of Ontario has authorized re-opening of certain types of services during the spring and summer of 2020, this does not suggest that all places of living or working are obliged to follow these guidelines.

[20] I also find that the Corporation was reasonable in maintaining the Policy over the past four months. The pandemic response has included restrictions on many aspects of daily living in Toronto since mid-March of 2020. The pandemic is still capable of spreading in the

community. It has been approximately four months since the Policy was implemented. This is not an unreasonable period given the context and the seriousness of the health risk that has led to the Board adopting the Policy. The Policy is not absolute and will give way to matters of emergency or health risks. A reasonable Policy may become unreasonable if it is in place longer than is necessary. However, in this case, the evidence does not support a finding that this stage has been reached yet.

II. Were the Corporation's actions in enforcing the Policy, "unfair, unreasonable, or prejudicial" toward Ms. Fraser?

[21] Ms. Fraser makes several arguments on the application of the Policy. She submits that she was unfairly denied approval to do the repairs, and that the Corporation authorized another unit holder to repair a leak in June. This means that the Policy was not applied fairly.

[22] First, the record reveals that before beginning the work on July 21, 2020, Ms. Fraser did not submit any paperwork to support a finding that the work needed to respond to an emergency or was otherwise essential. The property management representative invited her to provide material concerning mould or other health hazards in the unit, but this was not done.

[23] Ms. Fraser argues that the Corporation applied the Policy unevenly, including allowing work by another unit-holder in June to fix an active leak. The unit-holder supplied insurance documents in support of the claim. The Board applied the Policy and permitted the unit-holder to fix the leak and the floor. Five other requests to make renovations during this period were turned down by the Corporation. The evidence on this point does not support a finding that Ms. Fraser was treated unfairly or that the Board applied the Policy unevenly in her case.

[24] Ms. Fraser also argues that work done by the Corporation amounted to uneven application of the Policy. This work included cleaning in the lobby and parking garage, and the testing of fire safety equipment. I disagree. These are demonstrably health and safety related matters as they apply to the common areas. They are different in substance and purpose from in-unit repairs.

[25] Ms. Fraser was not happy with the application of the Policy to her circumstances. Counsel submitted that she acted out of frustration, in part because the flooding was caused by a contractor who was arranged by the Corporation, although she paid for the repairs. Counsel submitted that the Corporation ought to have taken this into account when she asked for permission to complete the repairs.

[26] Although it would have been open to the Corporation to become more actively involved with finding a solution to Ms. Fraser's flood damage pre-pandemic, this case is not about resolving the initial dispute. After the pandemic response began, the Corporation put in place the Policy to address the health and safety of residents. I have found the Policy to be a reasonable exercise of its rule-making powers. The context changed and Ms. Fraser as well as all unit-holders, became subject to a more restrictive policy (along with the other restrictions that applied to Toronto residents).

[27] The evidence is unequivocal. Ms. Fraser was frustrated by the way that events unfolded. She hired a contractor to enter her unit and start work without permission. She was aware that permission was required. The Corporation brought these legal proceedings to halt the work and enforce the Policy.

[28] The Corporation did not treat Ms. Fraser in an unfair, prejudicial, or unreasonable manner. The Corporation advised her as the required information. It considered her requests. It applied the Policy to other unit-holders. The Corporation was reasonable in concluding that there was no emergency requiring the repairs proposed by Ms. Fraser.

III. Should Ms. Fraser's repair work be found to be an emergency or essential service and allowed to proceed?

[29] After the work started on July 21, 2020 Ms. Fraser submitted a letter from her contractor who confirmed that there was water damage to the floor which "could" lead to contamination. A home inspector, tendered as an expert, opined that there were normal levels of mould in the unit. Ms. Fraser's position is not that active mould requires remediation, but the lack of replacement flooring represent a safety issue for the occupants of the unit and the inability to use the second bedroom and bathroom interferes with her tenants' (and her, when she is staying there) quiet enjoyment of their unit.

[30] The Corporation submits that this additional material is insufficient, but if it were found to have established mould requiring remediation, the scope of the proposed renovations would exceed what is necessary to remediate any mold problems. The Corporation seeks to uphold the Policy to fairly treat all owners, including those who have abided by the Policy and put their plans for renovations or other repairs to their units on hold.

[31] The Corporation through counsel has considered the letter from Ms. Fraser's contractor as to the possibility of contamination, and the opinion of the home inspector. It has concluded that neither document supports permission under the Policy to complete the repairs to the unit, but that once the Policy is reviewed that Ms. Fraser will be in the queue to complete this work. This is a reasonable position to take. Neither the letter nor the opinion of the home inspector supports a finding that there are health or safety risks in the unit which would warrant the court intervening. Between November and July, the tenants lived in the unit. It is clear there was inconvenience to them, however there is no evidence of any health or safety issue posed to them during this period caused by the wait for repairs. Aside from counsel's submission that the unit is in a "shambles" at the present time because of the half-finished work, this arose from Ms. Fraser's decision to begin unauthorized repair work. Prior to that time the unit was able to be occupied.

[32] I decline to order the Corporation to permit Ms. Fraser to complete the repairs started in July contrary to the Policy. If Ms. Fraser submits new material in support of future requests or the Policy is amended, Ms. Fraser's application should be accorded reasonable consideration and considered afresh.

IV. COSTS

[33] If the parties are not able to agree as to costs, they make brief written submissions (maximum 5 pages) by electronic delivery on or before September 22, 2020.

Leiper J.

Released: September 10, 2020

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