CITATION: Polchil Homes Ltd. v. Peel Condominium Corporation No. 245, 2023 ONSC 2364
COURT FILE NO.: CV-22-681912
DATE: 20230418

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Polchil Homes Ltd., Applicant

-and-

Peel Condominium Corporation No. 245, Respondent

BEFORE: Robert Centa J.

COUNSEL: Timothy M. Duggan, for the applicant

Peter Rollo and Cailyn Prins, for the respondents

HEARD: April 6, 2023

ENDORSEMENT

[1] The applicant, Polchil Homes Ltd., owns a condominium unit in a residential condominium building managed by the respondent Peel Condominium Corporation No. 245.[1] In 2021, Polchil started extensive renovations on its unit. When the corporation became aware of the renovations, which it viewed as unapproved and dangerous, it took the dramatic step of changing the locks to Polchil's unit. The corporation subsequently restored Polchil's access to its unit and conditionally approved the renovations.

[2] Polchil commenced this application under s. 135 of the *Condominium Act, 1998*.[2] It asserts that the corporation oppressed it in two ways: (i) unreasonably delaying approval of the renovation project; and (ii) locking Polchil out of its unit for some or all of 18 days. Polchil also seeks to assert claims under the Ontario *Human Rights Code*, which were assigned to Polchil by its principal and her fiancé.[3]

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[1] The applicant was incorrectly named "Polchil Holmes Ltd." in the notice of application issued May 30, 2022. On consent of the respondent and pursuant to rule 5.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, I hereby correct the name of the applicant incorrectly named to be "Polchil Homes Ltd."
[2] S.O. 1998, c. 19.
[3] R.S.O. 1990, c.H.19.

[3] For the reasons that follow, I grant the application in part. I dismiss the claim for damages under the *Human Rights Code* because an individual may not assign a claim under the *Code* to a corporation to be pursued in a civil proceeding. I also dismiss the claim that the corporation oppressed Polchil by unreasonably delaying its approval of the renovations. I do find, however, that the corporation oppressed Polchil by locking it out of its unit. I award damages of $10,000 to Polchil to remedy that oppression and I also remove the chargeback of the corporation's legal fees from Polchil's ledger.

Background Facts

[4] Although the parties have fundamental disagreements on several issues, there is broad agreement on the background facts and chronology. I will set out the background facts in this section and identify where there are facts in dispute. I will then return to the factual disputes when I address the issues raised in this application.

[5] Veronica Otoide is the principal of the applicant, Polchil Homes Ltd. Ms. Otoide is engaged to be married to Peter Dabal.

[6] On October 7, 2021, Polchil Homes purchased suite 1009 in a building that has 278 dwelling units. The corporation is governed by a board of directors and the building is managed on a day-to-day basis by Shui Pong Management Limited and its on-site representative, Larry Nolevski.

[7] Polchil intended to renovate the unit including by replacing the flooring, replacing the kitchen and a bathroom, installing new lighting fixtures, removing two non-load bearing walls, and replacing a non-load bearing wall in the solarium.

[8] On October 20, 2021, Ms. Otoide spoke to Mr. Nolevski by telephone for approximately 8 minutes. The parties dispute the nature and content of this conversation. Ms. Otoide's evidence is that Mr. Nolevski told her that Polchil was free to carry out all of these renovations, but that Polchil might need approval with respect to the flooring. Ms. Otoide's evidence is that when she did not hear back from Mr. Nolevski, she assumed that the corporation did not take any issue with the renovations. The corporation maintains that Ms. Otoide did not advise of an intention to install a drop-in ceiling, to change the location of electrical wires, to move walls, or to disconnect the fire systems. Mr. Nolevski, while not remembering the details of the conversation, denied that he approved any renovations to the unit as described by Ms. Otoide.

[9] Polchil commenced the renovations in November 2021. Prior to the events at issue, it appears that Mr. Dabal and Ms. Otoide carried out the renovations themselves.

[10] On December 23, 2021, Mr. Nolevski received a call form the on-site security guard reporting a "hard-fault" trouble signal in the building's fire alarm system. Mr. Nolevski drove to the building and learned that units 1009 and 1010 were being renovated. Mr. Nolevski and the building manager confirmed that unit 1010 was not the source of the hard-fault signal. Mr. Nolevski knocked on the door of unit 1009, no one answered, and Mr.

Nolevski entered unit 1009 because the hard-fault trouble signal was deemed to be an emergency.

[11] When he entered the unit, Mr. Nolevski observed extensive renovations, including electrical work with multiple exposed wires, no posted permits, a disconnected fire speaker, drywall encasing the heat detector, a disconnected smoke detector, the removal of walls, and alterations to the Unit's HVAC, plumbing, and ventilation systems.

[12] Mr. Nolevski was concerned that unit 1009 was no longer equipped to sense and signal the presence of any fire that started. He decided that the best course of action was to change the locks on unit 1009 until the situation could be further investigated and restored to safe operation.

[13] Mr. Nolevski spoke with Ms. Otoide that evening and advised her that the locks had been changed. Ms. Otoide did not consent to the corporation locking Polchil out of its unit and never consented to that decision. She repeatedly asked for the situation to be remedied and to be granted free access to her unit.

[14] On December 24, 2021, a representative of the Capital Fire & Security inspected unit 1009 and confirmed that the hard-fault signal resulted from the disconnected fire alarm speaker in unit 1009.

[15] On December 31, 2021, counsel for the corporation delivered a letter to Polchil setting out its position as follows:

> The Corporation advises us that prior to December 24, 2021 the Corporation's fire alarm system indicated a 'trouble' status and that it was subsequently discovered the cause related to extensive renovations within your unit. Such investigation revealed extensive, illegal and unauthorized renovations, including removal of the solarium glass wall and fire alarm detector, installation of a steel studded wall with a door frame as well as drywall covering the heat detector. It is the Corporation's understanding that you have neither a building permit or permit from the Electrical Safety Authority.
>
> Tampering with the fire safety equipment within Unit 1009 is contrary to section 117 of the Condominium Act, 1998, (the "Act") which provides that No person shall permit a condition to elements if the condition or the activity likely to damage the property or cause injury to an individual. This is a serious issue, and as a result, the Corporation has secured Unit 1009 until such time as the dangerous conditions are remedied.
>
> In order to address the dangerous conditions, the Corporation has arranged for the Fire Department and Electrical Safety Authority to attend at Unit 1009 on Monday, January 3, 2022. This letter shall serve as the Corporation's notice of entry to attend at Unit 1009 in

> connection with performing its objects and duties, including to address breaches of section 117 of the Act and to protect the health and safety of all residents.
>
> Further, the Corporation requires that you immediately submit full specifications of all existing and proposed renovations of the unit for review and approval by the board of directors. Such specifications are to be forwarded to property management by no later than Tuesday January 4, 2021. No work is to continue or commence in the unit until further notice.
>
> Renovations are not allowed unless you receive permission and follow the proper process. Section 11(b) and 16(c) of the Corporation's declaration forbids making any structural change or alteration in a unit or to the common elements without the written consent of the Corporation. Section 98 of the Act also restricts changes to the common elements. The "common elements" are the parts of the condominium property which are not part of a unit, such as the walls as well as pipes and electrical wiring that are within any walls.

[16] On January 4 and 5, 2022, an investigator from Electrical Safety Authority inspected unit 1009 and issued a compliance order.

[17] On January 5, 2022, at the request of the board, Polchil filed a written request for approval of the renovations.

[18] On January 7, 2022, a representative of the City of Mississauga Fire and Emergency Services inspected unit 1009 and issued a compliance order.

[19] On January 9, 2022, following the inspections set out above (but before some of the compliance work had been completed) the corporation restored Polchil's access to the unit. Polchil was locked out of its unit for some or all of 18 days.

[20] The board requested additional information to assess Polchil's renovation request and, as of January 18, 2022, some of the requested information remained outstanding. The board reviewed the renovation request on January 27, 2022, and on February 18, 2022, provided conditional approval of the proposed renovations.

[21] Ultimately, the corporation retained counsel to handle the situation with Polchil. The corporation incurred legal fees of $7468.27, which it charged back and added to Polchil's common expense account.

***Human Rights Code* damages**

[22] On May 29, 2022, Ms. Otoide assigned her claims "pursuant to the *Human Rights Code*" against the corporation to Polchil. The assignment read as follows:

> THIS ASSIGNMENT is hereby made as of May 29, 2022.
>
> I, Veronica Otoide, do hereby assign to Polchil Homes Ltd. all claims that I have against Peel Condominium Corporation No. 245 pursuant to the Human Rights Code as of the effective date of this Assignment.
>
> I confirm that I have not commenced any proceeding in respect of the claims assigned hereunder, and that I have not assigned these claims to any other person or entity.

[23] On the same day, using identical language, Mr. Dabal assigned his claims to Polchil.

[24] In this application, Polchil sought damages pursuant to the *Human Rights Code*. Polchil submitted that Ms. Otiode is a Black woman, and that Mr. Dabal is of Polish descent. Polchil made the following submissions in its factum:

> 62. Subsection 2(1) of the Code provides that every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of, inter alia, race, place of origin or ethnic origin. Section 9 prohibits the infringement of the rights provided by subsection 2(1).
>
> 63. Pursuant to subsection 46.1(1) of the Code, if this court finds that Nolevski, as agent for PCC 245, breached Otoide's and Dabal's rights pursuant to subsection 2(1), then the court can make an order directing PCC 245 to pay Polchil (as assignee of Otoide's and Dabal's claims under the Code) monetary compensation.
>
> 64. As is noted above, Otoide and Dabal were subject to differential treatment compared to the owner of Suite 1010, who was carrying out similar renovations. Given Nolevski's comment to Dabal in respect of his place of origin and ethnic origin, and given Nolevski's demonstrated antipathy toward Otoide and Dabal, an inference should be drawn that Nolevski's actions were motivated, at least in part, by Otoide's and Dabal's race, place of origin and/or ethnic origin. Polchil should therefore be awarded damages for breach of the Code.

[25] Polchil cited no provisions of the *Human Rights Code* that expressly permit an individual to assign her or his human rights claim to a corporation. Polchil provided no case law in support of its proposition.

[26] I accept Ms. Prins' submissions that an individual is not permitted to assign their human rights claim to a corporation to be pursued in a civil proceeding.

[27] The modern principle of statutory interpretation is well established: legislation is to be interpreted in a manner that gives effect to the intention of the Legislature, and legislative intention is to be determined having regard to the text, context, and purpose of the legislation.[4]

[28] The *Human Rights Code* is designed to permit individuals to vindicate claims that their rights have been infringed by bringing applications in their own name to the Human Rights Tribunal. Section 34 provides that:

> 34(1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,
>
> > (a) within one year after the incident to which the application relates; or
> >
> > (b) if there was a series of incidents, within one year after the last incident in the series.

[29] The Tribunal has the power to order the infringing party to pay monetary compensation to the party whose right was infringed. Section 45.2 states:

> 45.2 (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:
>
> > 1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
> >
> > 2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
> >
> > 3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act.

[4] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at paras. 117-18.

[30] In specified circumstances, the *Code* permits a person or an organization to apply on behalf of another person to the Tribunal but that application must be brought in the name of the person who believes her or his rights have been infringed. Subsections 34(5) to (8) state:

> 34(5) A person or organization, other than the Commission, may apply on behalf of another person to the Tribunal for an order under section 45.2 if the other person,
>
> (a) would have been entitled to bring an application under subsection (1); and
>
> (b) consents to the application.
>
> (6) If a person or organization makes an application on behalf of another person, the person or organization may participate in the proceeding in accordance with the Tribunal rules.
>
> (7) A consent under clause (5)(b) shall be in a form specified in the Tribunal rules.
>
> (8) An application under subsection (5) shall be made within the time period required for making an application under subsection (1)

[31] Read together, the *Code* permits a corporation to apply to the Tribunal, on behalf of and in the name of another person, to seek an order that the infringing party pay monetary compensation to the person who had their rights infringed. I do not see anything in the *Code* that would permit a person to assign their claim to a corporation or have that corporation pursue the claim in its own name. Indeed, the *Code* prohibits that approach.

[32] In my view, the *Code* is even more restrictive in its approach to civil proceedings in court. A court can award monetary compensation in respect of an infringement of the *Code* only in the limited circumstances described in section 46.1, which provides as follows:

> 46.1 (1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:
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> 1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
>
> 2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.

> (2) Subsection (1) does not permit a person to commence an action based solely on an infringement of a right under Part I.

[33] Polchil cannot bring itself within the scope of s. 46.1(1). First, the defendant has not "infringed a right under Part I of another party to the proceeding." The other party to the proceeding, Polchil, does not have rights under Part I of the *Code*. Second, Polchil is not seeking an order directing the party who allegedly infringed the right (the corporation) to pay monetary compensation to the party whose right was infringed (Ms. Otoide and Mr. Dabal). Polchil is seeking an order that the defendant pay money to Polchil, the corporation that took an assignment from the persons whose rights were infringed.

[34] Interpreting the *Code* in light of its text, context, and purpose, I find that it does not permit persons to assign to a corporation their claim that someone has infringed their rights under the *Code* to a corporation to seek monetary relief in a civil proceeding.

[35] This result is consistent with the general law of assignment. Personal torts, such as assault, libel, or personal injury, may not be assigned.[5] Rights under the *Charter* cannot be assigned.[6]

[36] I dismiss Polchil's claim for damages under the *Code*.

Oppression remedy

[37] Section 135 of the *Condominium Act* creates a statutory oppression remedy that allows allows a unit owner to apply to the court for relief from conduct that is oppressive or unfairly prejudicial to the applicant, or that unfairly disregards the interests of the applicant:

> 135(1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Superior Court of Justice for an order under this section.
>
> (2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter.
>
> (3) On an application, the judge may make any order the judge deems proper including,

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[5] *Frederickson v. Insurance Corp. of British Columbia* (1986), 1986 CanLII 1066, 28 D.L.R. (4th) 414 (B.C.C.A.) affirmed, 1988 CanLII 38 (SCC), [1988] 1 S.C.R. 1089; *N.H.B. v. L.B.*, 2012 ONSC 1454.

[6] *R. v. Rahey*, 1987 CanLII 52 (SCC), [1987] 1 S.C.R. 588 at 619; *PSC Industrial Services Canada Inc. v. Ontario (Ministry of the Environment)*, (2005), 258 D.L.R. (4th) 320, at paras. 24 to 26; *Anishinaabeg of Kabapikotawangag Resource Council Inc. v. Canada (Attorney General)*, 53 C.R.R. (2d) 183, at paras. 17 and 18.

> (a) an order prohibiting the conduct referred to in the application; and
>
> (b) an order requiring the payment of compensation.

[38] Section 135 of the *Condominium Act* is drafted in the same language as the oppression remedies set out in the corporate statutes.[7] Corporate law principles regarding oppression are, therefore, applicable in determining what constitutes conduct that is "oppressive", "unfairly prejudicial" or "unfairly disregards" the applicant's interests in the context of condominium law.[8] Prior cases have helped us to understand the type of conduct captured by each of these ideas:

a. Oppressive conduct is burdensome, harsh, wrongful, and requires a finding of bad faith, while conduct that is unfairly prejudicial or that unfairly disregards the interests of the applicant does not;[9]

b. Unfair prejudice means a limitation on or injury to an applicant's rights or interests that is unfair or inequitable;[10] and

c. Unfair disregard means to unjustly ignore or treat the interests of the complainant as being of no importance.[11]

[39] The oppression remedy protects a party's reasonable expectations, which are rooted in the law and legal documents that govern the relationship between the parties. In *BCE*, the Supreme Court of Canada described what an applicant must show to demonstrate oppression this way:

> [89] Thus far we have discussed how a claimant establishes the first element of an action for oppression — a reasonable expectation that he or she would be treated in a certain way. However, to complete a claim for oppression, the claimant must show that the failure to meet this expectation involved unfair conduct and prejudicial consequences within s. 241 of the CBCA. Not every failure to meet a reasonable expectation will give rise to the equitable considerations that ground actions for oppression. The court must be satisfied that the conduct falls within the concepts of "oppression", "unfair prejudice" or "unfair disregard" of the claimant's interest, within the meaning of s. 241 of the CBCA.

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[7] *Toronto Standard Condominium Corp. No. 2130 v. York Bremner Developments Ltd.*, 2016 ONSC 5393, at para. 103.
[8] *McFlow Capital Corp. v. James*, 2020 ONSC 374, at paras. 138 to 144; *Niedermeier v. York Condominium Corp. No. 50* (2006), 2006 CanLII 21788, 149 A.C.W.S. (3d) 708 (Sup. Ct. J.).
[9] *Brant Investments Ltd. v. Keeprite Inc*. (1991), 3 O.R. (3d) 289 (C.A.) at p. 305-306.
[10] *Walia Properties Ltd. v. York Condominium Corp. No. 478*, 2007 CanLII 31573 (ON SC), at para. 23.
[11] *Niedermeier*, at para. 8; *Consolidated Enfield Corp. v. Blair* (1994), 1994 CanLII 7543, 19 B.L.R. (2d) 9 (Ont. Gen. Div.), at para. 80.

> Viewed in this way, the reasonable expectations analysis that is the theoretical foundation of the oppression remedy, and the particular types of conduct described in s. 241, may be seen as complementary, rather than representing alternative approaches to the oppression remedy, as has sometimes been supposed. Together, they offer a complete picture of conduct that is unjust and inequitable, to return to the language of Ebrahimi.
>
> [90] In most cases, proof of a reasonable expectation will be tied up with one or more of the concepts of oppression, unfair prejudice, or unfair disregard of interests set out in s. 241, and the two prongs will in fact merge. Nevertheless, it is worth stating that as in any action in equity, wrongful conduct, causation and compensable injury must be established in a claim for oppression.
>
> [91] The concepts of oppression, unfair prejudice and unfairly disregarding relevant interests are adjectival. They indicate the type of wrong or conduct that the oppression remedy of s. 241 of the CBCA is aimed at. However, they do not represent watertight compartments, and often overlap and intermingle. [12]

[40] I find that the corporation violated section 135 when it locked Polchil out of its unit.

Locking Polchil out of the unit was oppressive

[41] Polchil had had a reasonable expectation that it would not be deprived of access to its unit without due process of law or in a manner that was not contemplated by the declarations, the *Condominium Act*, or the common law. The corporation's decision to lock Polchil out of the unit violated Polchil's reasonable expectations in a way that was unfairly prejudicial to the interests of Polchil. The 18-day lock-out was a limitation on or injury to Polchil's rights or interests that was unfair or inequitable. Indeed, the conduct of the corporation was unlawful.

[42] I am prepared to accept that Mr. Nolevski had the right to enter the unit in the case of an emergency pursuant to s. 30(b) of the corporation's declarations. I do not accept Polchil's submissions that the hard-fault signal was a pretence. The dangerous situation justified his decision to enter unit 1009 to identify the source of the hard-fault. I am even prepared to accept that Mr. Nolevski could enter the unit to provide access to the fire safety consultants, the Electrical Standards Authority, and Mississauga Fire and Safety Services to inspect the unit (although it would have been prudent to obtain Polchil's written consent in each case).

[12] *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at paras. 89 to 91.

[43] However, I do not accept that the corporation had any lawful authority to change the locks and completely deprive Polchill of access to its property.[13]

[44] This type of self-help remedy is to be discouraged in the strongest possible terms. If the corporation could not persuade Polchil to stop work while the corporation satisfied itself that the situation was safe and under control, it should have gone to court to put its case before a judge and to seek an order to provide it with the necessary relief.

[45] Self-help remedies beget self-help responses. We cannot create an environment where condominium corporations or their staff choose who will get locked out of their units and when. The prospect of such decisions leading to rapidly escalating confrontations and violence justify the firm denunciation of such actions.

The approval of the renovations was not oppressive

[46] Polchil submits that the condominium corporation acted oppressively by "attacking" Polchil for conducting unauthorized renovations after Mr. Nolevski approved the renovations and that it unreasonably delayed providing its approval after it decided that formal approval would be required. I find that Polchil has not proven these acts of oppression on a balance of probabilities.

[47] I find as a fact that Mr. Nolevski did not approve the renovations during the phone call with Ms. Otoide on October 20, 2021.

[48] The condominium corporation had a pre-printed form that owners were to fill out to request to undertake renovations to their units. That form made clear that the consent of the board of directors was required in order to proceed with the renovations. Indeed, the form required the owner to provide covenants and assurances to the board of directors before the renovations could begin:

> 5. The Owner hereby covenants not to commence installation of the betterments and improvements until the following conditions are satisfied:
>
> > (a) The Owner has provided plans, descriptions and details of such betterments and improvements to the Board of Directors of the Corporation.
> >
> > (b) The Owner has obtained all consents, approvals and permits required by the relevant Municipal and Governmental authorities to complete the installations of such betterments and improvements.

[13] *Sarah Computer Consulting Inc. v. Peel Condominium Corp. No. 421*, 2012 ONSC 3708, at paras. 37 to 53.

> (c) The Owner has obtained consent in writing from the Board of Directors of the Corporation permitting installation of such betterments and improvements.

[49] Given the corporation's use of this form, including its requirement that the owner provide plans, descriptions, and details to the board, it seems very unlikely that Mr. Nolevski would purport to approve significant renovations during a brief telephone call with Ms. Otoide. To do so would be to usurp the powers of the board and to prevent the board from obtaining the covenants the owner is to provide.

[50] I also do not accept that the fact that the security guard at the building knew that Polchil was bringing building materials into the building, and organized the service elevator for this purpose, is a proxy for board approval or knowledge of the renovations or their extent.

[51] Ms. Otoide and Mr. Nolevski may not have understood each other at the end of the conversation, but I find that he did not approve the renovations during that call.

[52] I am also not satisfied on a balance of probabilities that the condominium board delayed approving Polchil's plans unduly. The timeline of the approval process was as follows:

a. January 5, 2022: Polchil filed a written request for approval of the renovations. On that day, the corporation responded and requested an accurate drawing that reflected the room to be created in the solarium and the laundry area, the Electrical Standards Association permit number and contractor information, the legal name of the licenced contractors and their insurance certificates.

b. January 7, 2022: Polchil provided an updated drawing of the solarium and indicated the remaining information would be provided shortly;

c. January 9, 2022: the corporation (through counsel) followed up again for the requested information;

d. January 18, 2022: some of the information requests remained outstanding;

e. January 20, 20022: the corporation informed Polchil that its board would be meeting to consider the renovation request the next week;

f. January 27, 2022: The board of directors reviewed the renovation request;

g. February 18, 2022, the board provided conditional approval of the proposed renovations;

h. April 1, 2022: Polchil completed its renovations to the unit.

[53] The decision of the board of directors and the conditions imposed show a careful and detailed consideration of the renovation proposals. The letter communicating the conditional approval read, in part, as follows:

> [The corporation's] board has reviewed the renovation request enclosed with this letter and takes no issue with the renovations listed in Schedule 'A', except for the following:
>
> - 2" drop ceiling in living room, dining room, kitchen, and hallway. Approval will he provided subject to the unit owner agreeing to: (1) move all components of the fire system found on the ceiling to the level of the drop ceiling, and (2) the work to be completed by PCC 245's authorized contractors to ensure that the resulting adjustments conform to tac requirements of PCC 245's fire alarm system at the owner's cost.
>
> - Replace damaged solarium glass wall (non-load bearing) with partition/glass wall with doorway. Approval will be provided subject to the unit owner agreeing that the width of the original opening remains the same (please reference red arrow in diagram below), with no framework that would allow a door to be installed. Once renovations are completed, the unit owner must permit [corporation's] representatives to attend at the Unit to confirm that the unit owner has complied with these conditions. Please note that PCC 245's board does not consent to the creation of an additional room.
>
> - Remove 2 partition walls (drywall, non-load bearing, no wires) from storage room. Approval will be provided subject to PCC 245's representatives confirming that the unit's electrical panel has not changed locations, enclosed or covered under dry wall or been tampered with.
>
> In addition to the above conditions, your client must ensure that all renovations comply with the Ontario Building Code, Ontario Fire Code and any other regulations that may apply.

[54] Polchil has not satisfied me on a balance of probabilities that the board's consideration of Polchil's renovation request, or the time the board took to reach its decision, was oppressive.

[55] First, Polchil submits that it was treated unfairly because the renovation request for unit 1010 was processed more quickly. I am not satisfied that there is sufficient evidence in the record before me to draw any conclusions about the time taken to process unit 1010's application. There is also insufficient evidence for me to conclude that the two applications were meaningfully similar. Ms. Otoide's statement that the renovations "are nearly identical" appears inconsistent with other documents in the record and is, at best, a lay opinion to which I can give little weight. I am not satisfied that the renovations in unit 1010

were as extensive as Polchil's renovation or that unit 1010's renovation was at the same stage of progress.

[56] Second, the record does not satisfy me that the total processing time for Polchil's application was unreasonable. The entire process took from January 5 to February 18, 2022. The application was not completed until approximately January 18, 2022. Given the part-time nature of board members' work, the time the board took to resolve the application is not obviously unreasonable. Moreover, there was no expert evidence regarding what an appropriate length of time would be for a similarly situated condominium board to process an application like Polchil's application in similar circumstances.

[57] Third, there is no evidence to suggest that Polchil had a reasonable expectation that its application would be processed more quickly. I was not taken to any provision of the *Condominium Act*, the corporation's declarations, by-laws, or policies that provided a service standard for the processing of an application to permit renovations. I have no doubt that Polchil wanted the application processed as quickly as possible. That is not the same however, as a reasonable expectation that the application would be processed more quickly.

[58] The evidence does not satisfy me that the board's consideration of Polchil's application was oppressive or unfairly prejudicial, or that the board unfairly disregarded Polchil's interests in the context of condominium law.

Remedy

[59] Polchil seeks the following relief:

a. $50,000 in damages for violation of the *Human Rights Code*;

b. $16,000 in damages under the oppression remedy for the delayed approval of the renovation project;

c. $34,000 in damages under the oppression remedy for the lockout from the unit, roughly calculated at the rate of $2,000 per day;

d. An order removing the chargebacks applied to the unit's ledger arising from legal fees incurred by the corporation.

[60] For the reasons set out above, Polchil may not claim damages under the *Human Rights Code* and did not prove that the corporation's process of approving the renovation application was oppressive.

[61] I have found that the corporation oppressed Polchil by locking it out of its unit from December 23, 2021, to January 9, 2022.

[62] The court has wide discretion to award remedies for oppression under s. 135 of the *Condominium Act*.[14] The court may order a broad range of remedies tailored to the particular circumstances of each case. The court may make any order it considers appropriate to rectify the situation including, but not limited to, an order that the corporation pay compensation to Polchil.[15]

Relief from legal fees incurred by corporation

[63] The corporation incurred legal fees of $7468.27, which it charged back and added to Polchil's common expense account. As a remedy for the oppression, I find that it is appropriate to relieve Polchil of any obligation for the corporation's legal fees.

[64] Although the corporation did not put a lien on the unit, the limitation period had not lapsed and the corporation could elect to commence a claim for damages arising from the legal fees that it charged back. While the parties debated whether or not the corporation had the statutory and contractual authority to impose the chargeback, I think that is beside the point in these circumstances.

[65] The legal advice the corporation received was connected, in part, to the decision to lock Polchil out of the unit and to maintain that lockout from December 23, 2021, to January 9, 2022. I have declared that act to be oppressive. If Polchil had paid the chargeback, I would find that the chargeback amounted to damages for which it should be compensated.

[66] As I understand it, Polchil has not paid the chargeback, which remains on its ledger. Therefore, I declare that the chargeback of $7468.27, plus any accrued interest or fees on that amount, be removed from the unit ledger.

Damages

[67] Polchil paid the chargeback for the work done by Capital Fire, the corporation's building consultant. I do not award damages in respect of this amount. I do not find that this expense is causally connected to the oppressive act, being the lockout. That expense arose because Polchil tampered with the fire detection and suppression systems during its renovations. I would not relieve Polchil of that expense.

[68] Polchil has not proven any other damages caused by the oppressive act of the corporation.[16] No invoices were tendered for additional expenses Polchil incurred as a result of the lock out. As the unit was unoccupied, Polchil did not incur any additional expenses for alternative accommodations.

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[14] *Sarah Computer Consulting Inc. v. Peel Condominium Corp. No. 421*, 2012 ONSC 3708, at para. 54.
[15] A. Loeb, *Condominium Law and Administration*, 2nd Ed. (Thomson Reuters) § 24:18.
[16] *Couture v. Toronto Standard Condominium Corp. No. 2187*, 2015 ONSC 7596, at para. 65.

[69] That said, Polchil was entirely deprived of access to their unit due to an oppressive act. In my view, that entitles Polchil to general damages.[17] The lock-out was not momentary or even short-term. The oppressive situation was not corrected despite immediate and consistent protests of Polchil. The corporation's resort to self-help remedies was inappropriate and the court wishes to send its strong disapproval of such a decision to recognize the importance of Polchil's property interest, to ensure that the corporation does not engage in such self-help remedies in the future, and to signal to the broader condominium community about how the court views a self-help approach.

[70] In all of the circumstances, I award Polchil $10,000 in general damages for the corporation's oppressive conduct.

Costs

[71] If the parties are not able to resolve costs of this action, Polchil may email its costs submission of no more than three double-spaced pages to my judicial assistant on or before April 25, 2023. The corporation may deliver its responding submission of no more than three double-spaced pages on or before May 2, 2023.

[72] No reply submissions are to be delivered without leave.

Robert Centa J.

Date: April 18, 2023

[17] *Wu v. Peel Condominium Corp. No. 245*, 2015 ONSC 2801 (Ont. S.C.J.); *Noguera v. Muskoka Condominium Corporation No. 22*, 2018 ONSC 7278, 2 R.P.R. (6th) 116 at para. 85; *Couture* at para. 69; *Sarah Computer Consulting Inc. v. Peel Condominium Corp. No. 421*, 2012 ONSC 3708, at paras. 54 to 60.