KING'S BENCH FOR SASKATCHEWAN

Citation: **2023 SKKB 143**

Date: **2023 06 29**
Docket: KBG-SA-00438-2023
Judicial Centre: Saskatoon

BETWEEN:

DARREN CHRISTOPHER SOPHER

APPLICANT

- and -

THE OWNERS: CONDOMINIUM PLAN NO. 82S15667

RESPONDENT

Counsel:

Angela M. Eagle — for the applicant
Taylor L. Wilcox — for the respondent

FIAT — MORRALL J.
June 29, 2023

Introduction

[1] Darren Christopher Sopher [Mr. Sopher] claims by originating application that the conduct of the condominium corporation registered as The Owners: Condominium Plan No. 82S15667 [Condo Corp] in which he bought a residential unit

[Condo] was oppressive because they instructed him to remove an in-suite laundry facility that he had installed in his Condo.

[2] Mr. Sopher has since sold his Condo but remains an interested party as the sale proceeds the new owner must pay to Mr. Sopher for the Condo will be reduced if the in-suite laundry facilities are removed.

[3] I am grateful to both parties for filing well-crafted briefs of law and making helpful submissions in this matter.

Background

[4] I will review the factual background in this matter by restating some of the salient material contained in the parties' affidavits. However, I will not reiterate every detail.

[5] In Mr. Sopher's affidavit sworn April 18, 2023, he states as follows:

1) He purchased his Condo on October 17, 2022.

2) The Condo Corp is the corporation constituted in relation to the entire condominium property where he purchased his Condo.

3) His Condo is in a 14-storey high rise building in Saskatoon with a total of 46 apartment style residential units.

4) He has owned condominium properties before and is familiar with condominium management and the nature and effect of their bylaws.

5) Prior to completing the purchase of the Condo, he received an estoppel package which included the estoppel certificate and other documents.

6) His communications with the Condo Corp have been primarily with Tara Franks [Ms. Franks] and the caretaker, David.

7) Before finalizing the purchase, he reviewed the estoppel package which included the past and current bylaws of the Condo Corp to ensure that he understood and was in agreement with the operation and rules of the Condo Corp.

8) When he purchased the Condo, he knew that there was a common laundry room on each floor. He considers laundry to be a basic home amenity and did not expect that having a common laundry area would preclude an owner from having in-suite laundry, if they chose to install those amenities.

9) From a review of the estoppel package, he noted the detailed rules did not permit structural changes unless they were documented and approved by the Board, that all electrical and plumbing must be arranged with a qualified tradesperson with the appropriate permits for any changes, garburators were prohibited, all repairs, additions or alterations to the exterior of the Condo required the prior written consent of the Condo Corp and that, if an owner was going to be away for more than 48 consecutive hours, that "Laundry taps should be turned off."

10) While he did note that the estoppel package indicated that the plumbing lines were not capable of handling the flushing of certain items, there were no references to limitations or prohibitions on dishwashers or in-suite washing machines. Further, his Condo came with a built-in dishwasher. If in-suite laundry was not permitted, he

states that he would have expected to see something about it in the estoppel package.

11) On September 22, 2022, in preparation for his purchase, he submitted a renovation application form to the Condo Corp so as to perform alterations to the kitchen, flooring, interior doors and casing with some re-wiring of the kitchen as well as a plumber to replace all shut-off valves. The application was approved by Ms. Franks on September 27, 2022.

12) He completed this application prior to viewing the Condo and upon being present for the renovation process he determined that in-suite laundry would be “an easy and desirable” addition and added the work when the licensed journeyman plumber was there to change the shut-off valves. This decision was made “in the moment”.

13) He installed the laundry facilities which consisted of a water supply and drain in the storage/utility room of the Condo. No drilling into the floor or substantial work was required.

14) While he did not include the installation of laundry facilities in his renovation application, he states that he believed he was permitted to do so without prior approval as it involved “the ordinary use and enjoyment” of his Condo.

15) The caretaker, David, was assisting in deliveries to his Condo during the renovation and did not mention anything about the laundry installation, although he did not recall whether “David” was in the unit after he had purchased the washing machine and dryer.

16) On December 7, 2022, in relation to another matter, he contacted Ms. Franks and she responded the same day and asked whether he had a washing machine, and if he did, advised that it would have to be removed as it was not approved for the reason that "the plumbing in the building does not allow each unit to have individual machines."

17) Ms. Franks gave him a deadline of December 20, 2022 to remove the laundry and return the Condo to its previous state and confirmed that, while the estoppel package did not specifically address the issue of in-suite laundry, she cited paragraph 1(t) of schedule 2 of the bylaws regarding structural alterations to a unit.

18) He installed a high efficiency washing machine in his Condo that uses less water and electricity than the washing machines in the common laundry room.

19) To date, he has not received any documentation relating to any reasons for the prohibition of in-suite laundry in the building.

20) On January 3, 2023, he retained a lawyer who sought clarification from the Condo Corp for the basis regarding the denial of in-suite laundry.

21) After some correspondence back and forth between counsel, he indicates that the Condo Corp's lawyer stated that the building's infrastructure would not handle in-suite laundry and if all owners wanted such amenities it would have a detrimental effect on the Condo Corp and "if plumbing back-ups occurred", there could be "increased insurance claims". As well, they indicated he would be

"circumventing the current pay system with the communal pay laundry" which would increase the common expenses fees for all owners in the building. He was given direction to remove the laundry by February 20, 2023.

22) On March 14, 2023, he received an e-mail from Ms. Franks advising that as of April 1, 2023 he would be charged an extra $18 a month for the in-suite laundry as this was an approximation of the amount he would have spent using the common laundry facilities each month. He does not oppose this fee.

23) Thereafter, he listed his Condo for sale and requested the estoppel package from Ms. Franks. The estoppel certificate he received on March 19, 2023, now indicates that in-suite laundry is not permitted.

24) The sale of the Condo is proceeding on April 19, 2023, but the sale of the unit is subject to a hold-back in the amount of $3,000. If the in-suite laundry remains, the hold-back is paid back to him but, if it is not, then the hold-back is returned to the buyer.

[6] In response, the Condo Corp filed the affidavit of David Miller sworn May 26, 2023 which states as follows:

1) He is a member of the board of directors on the Condo Corp and denies they have been oppressive towards Mr. Sopher.

2) Mr. Sopher never sought clarification or permission from anyone on the board with respect to the installation of in-suite laundry nor has he provided them with a permit for so doing.

3) With respect to the prohibition of garburators in the condominium units, he states that while initially included in the original construction of the building, they were outlawed as it was determined that the infrastructure of the building could not support their continued use which is also the board's position with respect to excluding in-suite laundry.

4) There is no reference to in-suite laundry in the bylaws as they have never been previously approved or installed and were not expressly permitted when the building was built, unlike garburators.

5) The noted restriction on the flushing of certain items and Mr. Sopher's stated experience with respect to condominiums should have indicated to him that the plumbing infrastructure has limitations on load handling and the need for Mr. Sopher to seek approval for changes.

6) The reference to turning off "laundry taps" if an owner is not in the premises for 48 hours appears to be a boilerplate list of policies in the estoppel package that are not all necessarily applicable to this block of condominiums.

7) In response to Mr. Sopher's notation of the lack of a study and clear directions regarding in-suite laundry, he states it would be impossible and economically prohibitive to conduct a feasibility study on every potential issue.

8) Mr. Sopher made no reference to in-suite laundry in his renovation application form and could have amended his renovation application form if he so desired. He renovated and installed the in-suite laundry

without the knowledge and consent of the board and contrary to the bylaws, rules, policy and procedure.

9) The board relied on Mr. Sopher's accurate representation of the work to be done. While the bylaws are detailed, it would be impossible to list every contingency.

10) In response to the portion of Mr. Sopher's affidavit relating to assistance of the caretaker "David", he states he was unaware that Mr. Sopher was installing a washing machine in his Condo until he saw a picture of it on Mr. Sopher's on-line real estate listing.

11) While Mr. Sopher asserts that installing the washing machine was not a structural change, Mr. Miller states that since installation required cutting open a wall and adding plumbing to the existing bathroom lines, including tying into the existing drainage, this work is structural in nature.

12) He believes that Mr. Sopher also had a ventless dryer which he believes comes with potential issues of high humidity in the unvented storage room where the units are located.

13) The additional $18 fee for the in-suite laundry does not constitute permission or approval by the board for the in-suite laundry but is simply a temporary measure.

14) The board takes the position that Mr. Sopher has violated the bylaws by not receiving written permission for the renovation to install the in-suite laundry and, upon discovering the renovations, the board took immediate steps to have the infraction remedied.

15) He states that Mr. Sopher is incorrect in identifying a unit with in-suite laundry as that owner installed a private washing machine in the common laundry room area and pays an additional fee for that privilege.

16) The board has experienced a number of issues with the plumbing in the past and in-suite laundry has never been approved despite requests.

17) The board fears that, based on the plumbing issues, should in-suite laundry be allowed it could cause backups in the building and potentially lead to increased insurance claims and thereafter increased premiums for the board.

18) As well, in-suite laundry would circumvent the current communal pay system which, given the units do not have separate water meters, would lead to owners sharing the increased water costs for the building as a whole.

19) Therefore, it is not feasible, reasonable or equitable to allow Mr. Sopher to continue to have in-suite laundry in his Condo.

[7] While some portions of these affidavits contain arguments and opinion, I will disregard those assertions in determining the underlying facts that relate to the analysis in this matter.

The Law

[8] Given Mr. Sopher alleges oppressive conduct on behalf of the Condo Corp in prohibiting in-suite laundry, s. 99.2 of *The Condominium Property Act, 1993*, SS 1993, c C-26.1 [*CPA*], is engaged. It states as follows:

> **Oppression remedy**
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> **99.2**(1) An owner, a corporation, a developer, a tenant, a mortgagee of a unit or other interested person may apply to the court for an order if the applicant alleges that the conduct of an owner, a tenant, a corporation, a developer 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.
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> (2) On an application pursuant to subsection (1), if the judge determines that the conduct of an owner, a tenant, a corporation, a developer 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, the judge may make any order the judge considers appropriate, including:
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> (a) an order prohibiting the conduct alleged in the application; and
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> (b) an order requiring the payment of compensation.

[9] Before beginning any analysis, it is best to review the nature of condominium ownership in order to properly frame the required legal tests. In *Goertz v The Owners Condominium Plan No. 98SA12401*, 2018 SKCA 41, [2018] 12 WWR 195 [*Goertz*], the Court stated as follows on the subject matter:

> 53 A quick review of the nature of condominium ownership provides context for the decisions made by the Condo Corp and the parties' dealings in this matter. Unlike ownership of a separate, privately-owned dwelling, condominium ownership comes with a bundle of rights and obligations determined by statute and bylaws, which attempt to strike a balance between the interests of the individual unit owner and the interests of the collective unit owners. This concept was explained in *Westmorland County Condominium Corp. No. 29 v. Estabrooks*, 2012 NBCA 26, 385 N.B.R. (2d) 230 (N.B. C.A.):
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> > [50] While condo units are real property for all purposes, the *Act* imposes limits on the freedom of choice that commonly accompanies ownership of real property. Those limits are designed to reflect the communal nature of condominium ownership and living. As noted nearly four decades ago in *Hidden Harbour Estates Inc. v. Norman* (1975, Fla App D4), 72 ALR (3d) 305, "[i]nherent in the condominium concept is the principle that to promote the health, happiness and peace of mind of the majority of the unit owners, living in close proximity and using facilities in common, each unit owner must give up a certain degree of

> freedom of choice which he might otherwise enjoy in separate, privately owned property". Perhaps the best general description of the condominium regime in effect in all common law provinces was provided by Cromwell J.A., as he then was, in 2475813 *Nova Scotia Ltd. v. Rodgers*, 2001 NSCA 12, [2001] N.S.J. No. 21 (QL):
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> > The term "condominium" refers to a system of ownership and administration of property with three main features. A portion of the property is divided into individually owned units, the balance of the property is owned in common by all the individual owners and a vehicle for managing the property, known as the condominium corporation, is established: see A.H. Oosterhoff and W.B. Rayner, *Anger and Honsberger Law of Real Property* (1985), Vol. II, s. 3801 and Alvin B. Rosenberg, *Condominium in Canada* (1969). The condominium may be seen, therefore, as a vehicle for holding land which combines the advantages of individual ownership with those of multi-unit development: Oosterhoff and Rayner at s. 3802. In a sense, the unit owners make up a democratic society in which each has many of the rights associated with sole ownership of real property, but in which, having regard to their co-ownership with the others, some of those rights are subordinated to the will of the majority: see Robert J. Owens et al. (eds), *Corpus Juris Secundum* (1996), Estates § 195, Vol. 31, p. 260 [emphasis added in *Rodgers*].
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> > As Oosterhoff and Rayner wisely observed, the success of a condominium depends in large measure on an equitable balance being struck between the independence of the individual owners and the interdependence of them all in a co-operative community. It follows, they note, that common features of all condominiums are the need for balance and the possibility of tension between individual and collective interests: at s. 3802. ...

[10] With respect to the legal test to determine whether to grant a remedy under s. 99.2 of the *CPA*, the Court in *Goertz* stated as follows:

> 136 The oppression remedy in s. 99.2 of the *CPA* has not been the subject of analysis by this Court. However, jurisprudence in other appellate courts is germane. Section 135 of Ontario's *Condominium Act, 1998*, SO 1998, c 19, dealing with the oppression remedy is worded in a very similar fashion to s. 99.2 of the *CPA*. Cases regarding that provision have established a two-part test, enunciated in *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69 at para 56, [2008] 3 SCR 560 [BCE Inc.], to be applied in determining whether impugned conduct amounts to oppression. To establish if there has been oppressive

conduct warranting a remedy, the claimant must demonstrate (a) that there has been a breach of its reasonable expectations, and (b) that, considered in the commercial context, the conduct complained of amounts to "oppression", "unfair prejudice" or "unfair disregard": see *Metropolitan Toronto Condominium Corporation No. 1272 v Beach Development (Phase II) Corporation*, 2011 ONCA 667 at para 6, 285 OAC 372; *3716724 Canada I*nc. at para 29. Given the similarity of the Ontario statute and the *CPA*, this two-part test can be applied to the analysis under s. 99.2 of the *CPA*.

137 Based on the foregoing, the oppression remedy under s. 99.2 addresses three kinds of unfair conduct:

(a) oppressive conduct;

(b) unfairly prejudicial conduct; and

(c) conduct that unfairly disregards the interests of the claimant.

138 The nature of the conduct described above was explained in *Ryan v York Condominium Corporation No.* 340, 2016 ONSC 2470, where Perell J., in construing s. 135 of the Ontario statute, said the following:

> [78] Oppressive conduct is coercive, harsh, harmful, or an abuse of power. Unfairly prejudicial conduct is conduct that adversely affects the claimant and treats him or her unfairly or inequitably from others similarly situated. Unfair disregard means to ignore or treat the interests of the complainant as being of no importance [citations omitted].
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> [79] In *Walla Properties Ltd. v. York Condominium Corp. No. 478*, [2007] O.J. No. 3032, supra, at paras. 23-24, Justice Harvison Young described conduct that falls within the oppression remedy of the *Condominium Act, 1988* as follows:
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> > [23] In the corporate law context, oppressive conduct requires a finding of bad faith, while conduct that is unfairly prejudicial or that unfairly disregards the interests of the applicant does not: see *Brant Investments v. Keeprite Inc.* (1991), 3 O.R. (3d) 289 (C.A.) at 305-306. Oppressive conduct has been described as conduct that is burdensome, harsh and wrongful. Unfair prejudice has been held to mean a limitation on or injury to a complainant's rights or interests that is unfair or inequitable. Unfair disregard means to unjustly ignore or treat the interests of the complainant as being of no importance: see *Niedermeier*, [2006] O.J. No. 2612 *supra*, and *Consolidated Enfield Corp. v. Blair* (1994), 47 A.C.W.S. (3d) 728, [1994] O.J. No. 850 (Gen. Div.) at

> para. 80. Loeb suggests that in the context of condominium law:
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> > ... "unfairly prejudicial" more appropriately describes deception, or different treatment for what may seem to be similar categories, whether financial or otherwise. "Unfairly disregards," however, may more accurately describe an alleged failure to take into account a legitimate minority interest or viewpoint: see Audrey M. Loeb, *Condominium Law and Administration*, looseleaf (Scarborough, Ontario: Thomson Carswell, 1998) at 23-23.
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> [24] When determining whether conduct falls within the meaning of s. 135, the court must be mindful that the oppression remedy protects the reasonable expectations of shareholders or unit owners. Reasonable expectations should be determined according to the arrangements that existed between the shareholders or unit owners of a corporation: see *Naneff v. Con-Crete Holdings Ltd.* (1995), 23 O.R. (3d) 481 (C.A.). In addition, the court must examine the cumulative effect of the conduct complained of.
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> 139 I accept the foregoing as a correct description of the nature of the types of conduct that may be found to be oppressive under s. 99.2 of the *CPA*.

[11] The Saskatchewan Court of Appeal in *Harvard Developments Inc. v Park Manor Condominium Corporation*, 2018 SKCA 81, [2019] 2 WWR 227, detailed certain guiding principles for the Court to follow with respect to applications of this nature as noted here:

> 31 The Supreme Court of Canada had occasion to consider the oppression remedy in a corporate context in *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69, [2008] 3 SCR 560 [*BCE*]. At paragraphs 58 and 59, the Court *per curiam* described oppression as an equitable remedy that seeks to ensure fairness, saying "[i]t gives a court broad, equitable jurisdiction to enforce not what is legal but what is fair." Because oppression is "fact-specific", conduct that may be oppressive in one situation may not be oppressive in another.
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> 32 In *BCE*, the Court held what is fair and equitable depends on an applicant's reasonable expectations. The Court went on to state that what amounts to a reasonable expectation must be viewed objectively as opposed to subjectively. A reasonable expectation is not what an applicant thought but, rather, what "is reasonable having regard to the

> facts of the specific case, the relationships at issue and the entire context, including the fact there may be conflicting claims and expectations": *BCE* at para 62.
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> 33 Not every breach of a reasonable expectation warrants the application of the equitable remedy of oppression. Rather, the court must be satisfied the conduct falls within the concepts of oppression, unfair prejudice or unfair disregard (*BCE* at paras 56, 68 and 89). Thus, the test for oppression is two-pronged. To establish oppression, an applicant must establish (i) a reasonable expectation, and (ii) that his or her reasonable expectation was breached or threatened to be breached by conduct that was oppressive, unfairly prejudicial or unfairly disregarded the interests of the applicant.

[12] Therefore, from a review of the above decisions, I find that the following principles and considerations guide this Court in making a determination whether to grant a remedy under s. 99.2 of the *CPA*:

1) The onus is on the applicant to establish oppressive conduct on all branches of the legal test.

2) Oppression is an equitable remedy that gives the Court a broad jurisdiction to enforce not what is legal but what is fair.

3) The applicant must first establish an objectively reasonable expectation. This is not what the applicant thought was reasonable but a fact specific exercise determining what is reasonable having regard to the facts of the specific case, the relationships at issue including a consideration of the conflicting claims and the previously existing relationships between the unit holders in the condominium.

4) If the applicant fails to establish a reasonable expectation, then his claim must be dismissed under s. 99.2 of the *CPA*.

5) If the applicant establishes a reasonable expectation, then he must establish that his expectation was breached or threatened to be breached either by conduct that was oppressive, or unfairly prejudicial or unfairly disregarded the applicant's interest.

6) Oppressive conduct constitutes a bad faith coercive harmful abuse of power.

7) Unfairly prejudicial conduct does not include the exercise of bad faith but constitutes unfair or inequitable conduct that treats the applicant differently from those similarly situated.

8) Unfairly disregarding the applicant's interests also does not include the exercise of bad faith but means conduct where the legitimate minority interests of the applicant are treated as being of no importance.

Issues

[13] I would frame the issues to be determined in this matter as follows:

1) Has Mr. Sopher established that his expectation to have in-suite laundry in his Condo is reasonable?

2) If this expectation was reasonable, was Mr. Sopher's expectation breached or threatened to be breached by conduct on behalf of the Condo Corp that was oppressive, or unfairly prejudicial or that unfairly disregarded Mr. Sopher's interests?

3) If Mr. Sopher's reasonable expectations were breached by such conduct, what remedy should be ordered by the Court?

Analysis

Reasonable expectations

[14] In addition to the legal requirements previously outlined with respect to this aspect of the legal burden imposed on the applicant, the Court in *Metropolitan Toronto Condominium Corp. No. 1272 v Beach Development (Phase II) Corp.*, 2010 ONSC 6090, 98 RPR (4th) 71, provides some specific considerations to assist in determining whether the expectations of an applicant are reasonable:

> 19 The concept of reasonable expectations is objective and contextual, taking into account the facts of the specific case, the relationships at issue and the entire context. The actual expectation of a particular stakeholder is not conclusive. The applicant must identify the expectations that were allegedly violated and establish that those expectations were reasonably held, based on factors that may include general commercial practice, the nature of the corporation, the relationship between the parties, steps that the claimant could have taken to protect itself, the fair resolution of stakeholders' conflicting interests and, importantly, representations and agreements…

[15] The factual matrix and policies and procedures governing the relationship between Mr. Sopher and the Condo Corp have been fully outlined in the material filed by the parties. While the expectations outlined by each party are at the opposite ends of the spectrum, the facts underpinning the application are largely uncontroverted. I will now determine whether Mr. Sopher's expectation to in-suite laundry in these factual circumstances is reasonable.

[16] I find it is clear that the estoppel package given to Mr. Sopher by the Condo Corp when he purchased the Condo did not contain any information about an owner's ability to install in-suite laundry. However, I also find it is not reasonable for an individual in Mr. Sopher's situation to believe that a lack of specific rule in those bylaws pertaining to something he describes as a "basic amenity" leads to a positive assumption that installing a washer and dryer in the Condo would be permissible. Let me explain.

[17] Firstly, I find that the lack of any bylaws in relation to the in-suite laundry is not legally determinative with respect to the existence of a reasonable expectation. While the estoppel package is voluminous and detailed, I do not find that it would be reasonable to expect that every single right and obligation between the owner and Condo Corp would be included. The comments of the Court in *Metropolitan Toronto Corporation No. 1272 v Beach Development (Phase II) Corporation*, 2011 ONCA 667, 9 RPR (5th) 165, are apposite in that regard:

> 9 The statutorily mandated proposed condominiums' governing documents, which are designed to detail what condominium purchasers should reasonably expect, make no reference to any cost-sharing agreement between the appellants and the declarants. While these documents specifically refer to the sharing of facilities and services, this reference alone does not support a finding that those who ultimately decided to purchase a condominium unit could reasonably expect that there would be a cost-sharing agreement when none was mentioned.

[18] Secondly, from a review of the respondent's affidavit material, I note that in-suite laundry was not originally built in when the building was constructed and that it has never been subsequently approved for a unit, despite requests. From that statement, I may infer that no other owner in the Condo Corp possesses or has installed a washer or dryer in-suite, except for Mr. Sopher. Mr. Sopher clearly bought his Condo knowing that it did not contain a washer and dryer. Therefore, it is reasonable to infer that, especially with someone with his experience with condominiums, an inquiry should be made of the Condo Corp, or anyone else in the building, to determine why such a "basic amenity" would not already exist and if there were any impediments to obtaining such an amenity. It is not axiomatic that the lack of a specific policy in the rules automatically leads to a rational conclusion that no issue therefore exists. I find this rational is reinforced when the work involved in installing the washing machine involved more than simply plugging it into an electrical outlet.

[19] Further, a reasonable person living in Saskatchewan purchasing a condominium that included common laundry areas would not assume, given the existence of common laundry areas, that they would automatically have the right to install in-suite laundry in their personal unit. The existence of common laundry facilities reasonably leads to the conclusion that in-suite laundry may not exist in the personal units for various reasons as a rational observer would question why the common laundry services would be provided by the Condo Corp. These laundry services would be expensive for the Condo Corp to purchase and maintain. At the very least, having regard to the factual situation in the case at bar, an inquiry by Mr. Sopher should reasonably have been made to the Condo Corp on this basis alone before installing his in-suite laundry. In this factual situation, there would be no reasonable expectation that he could proceed without issue.

[20] Thirdly, I find that Mr. Sopher contravened the bylaws by installing this in-suite laundry contrary to paragraph 1(t), schedule "2" and paragraph 18 of the Condo Corp Policies & Procedures. While I understand that acting "illegally" does not automatically equate to unreasonableness, I find that his actions in this factual situation in assuming that he could install the in-suite laundry despite not including the work required on his renovation application form to be unreasonable.

[21] Paragraph 18 of the Condo Corp's Policies & Procedures states as follows:

> **18. Alterations and Additions (Renovations)**
>
> An Owner must not make any additions or alterations to the interior of their unit without first having the specifications of such additions and alterations approved in writing by the Board of Directors on behalf of the Condominium Corporation. Any alteration or addition made by an owner without such Board approval may be restored or removed by the Corporation or its representative and the owner shall pay any costs incurred by the Corporation for such restoration to the Corporation. There shall be no modifications of any sort to the exterior of the building.

> A *Renovation Application* form must be completed and presented to the Property Manager or Board member for approval prior to the start of any renovations. Please contact ICR to obtain a form, an example of which is located in the Appendix section of this booklet.

[22] Schedule "2" of the Bylaws states:

> 1. An owner or tenant shall not:
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> …
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> (t) make or cause to be made any structural alteration or addition to his unit without first having the design and specifications of such alterations or addition approved in writing by the Board. Any alteration or addition made by an owner without such approval may be restored or removed by the Board or its duly authorized representative or representatives and any costs incurred by the Corporation as a result thereof shall forthwith be paid by such owner to the Corporation and shall bear interest at the rate of 18 percent per annum from the time such costs are incurred until paid;
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> …

[23] In the Bylaws, the word "structural alteration" is not defined, so I look at the contextual ordinary meaning of the word having regard to subject matter. In so doing, I find that the running of the water lines and the installation of a drain would be a structural alteration to a condominium unit. In adding these improvements, I find you are changing the structural characteristics of the room so as to accommodate the installation and functioning of a large appliance. While a prohibition against in-suite laundry is not specifically included in the estoppel package given to Mr. Sopher, these Bylaws are clear that permission must be obtained from the Condo Corp in order to proceed with alterations and renovations to the interior of a unit.

[24] Despite Mr. Sopher's argument that his alterations are not "structural", I find the reasonable course of action having regard to those listed policies in these circumstances clearly is to obtain permission. His affidavit material does not suggest that he relied on such a specific interpretation of the word "structural" to proceed in the

fashion he did. He assumed (and perhaps hoped) that there would be no issue with his installation.

[25] Further, when examining what is reasonable in the circumstances, it is important to review what Mr. Sopher did include in his renovation application. In his application dated September 22, 2022, he indicated that the "Kitchen and half wall (kitchen area), flooring (carpeted areas only), interior doors, trim/casing to be removed. There will be only one re-wiring of the kitchen range plug to accommodate a revised kitchen layout but it is only moving to the adjacent wall." He then states at the end of his application, "I would like to request a plumber to replace all shut off valves before the renovation is complete."

[26] While Mr. Sopher states he assumes that there would be no issue with an in-suite laundry, he still concerns himself in this application with the minutiae of advising the Condo Corp that he wishes to re-wire the kitchen range plug. I find that the running of water lines and the inclusion of a new drain to be at least as substantial an alteration as the re-wiring of a kitchen range plug. I find that the combined effect of the bylaws and application form would lead any reasonable owner to believe that complete disclosure is required for the performance of any minor or major alteration, structural or not, of the Condo.

[27] Therefore, in the context of an experienced condominium owner well aware of the bylaws, and based on the above reasons jointly and severally, I find it is completely unreasonable for Mr. Sopher to make these alterations based on an assumption and expectation he did not need permission to install the necessary plumbing to facilitate in-suite laundry. The difficulties with assumptions in any context and aphorisms describing such conduct are well known and heeded by reasonable individuals. I find Mr. Sopher did not have a reasonable expectation to install in-suite laundry.

[28] However, if I am wrong in my conclusion that the expectations of Mr. Sopher are unreasonable, I will now turn to analyze whether Mr. Sopher's reasonable expectation to install in-suite laundry was breached or threatened to be breached either by conduct of the Condo Corp that was oppressive, or unfairly prejudicial or unfairly disregarded Mr. Sopher's interest.

[29] Before scrutinizing whether these three types of conduct were present on behalf of the Condo Corp, I determine that the Condo Corp provided the following stated reasons for denying Mr. Sopher's request.

[30] Firstly, they stated that no other unit owner had in-suite laundry and any requests to have in-suite laundry have been denied.

[31] Secondly, they stated that the infrastructure of the building was not designed to accommodate in-suite laundry and should all unit owners place in-suite laundry in their units, the bottom floor units would soon experience backups which would increase insurance claims which would detrimentally impact all owners. At one point, they reference that in-suite laundry had been previously discussed by the board and denied with reference to an evaluation done by a plumber who stated that the existing piping and drainage was not fit for that purpose.

[32] Thirdly, they stated that by installing in-suite laundry, they believe Mr. Sopher will be circumventing the current pay system for the communal laundry and using more utilities than others in the building to the detriment of the other owners who would be required to pay increased common expense fees.

Oppressive Conduct

[33] The legal test for determining the presence of this type of conduct requires me to scrutinize whether the applicant has proven that the Condo Corp's denial of

Mr. Sopher's request was a bad faith, coercive, harmful abuse of power. I will now examine this test in the context of the three explanations given by the Condo Corp for denying Mr. Sopher's request.

[34] I find that the first reason for denial provided by the Condo Corp is essentially an equality and fairness argument on their behalf. They state that there is no reason to make a special exception for Mr. Sopher as no other unit has in-suite laundry. The only exception to this is one owner who was allowed to put his own laundry unit in the common laundry area, not in his suite.

[35] This appears to be a logical argument on behalf of the Condo Corp in the context of the stated facts. Mr. Sopher did not seek permission from the Condo Corp for this alteration to his Condo. He wants to be treated differently than the rest of the owners as a result of an assumption he made. Why should he benefit from his hubris in making such an assumption as opposed to the other owners who do not have such an amenity as they did not go ahead and install in-suite laundry without asking permission? While I realize he may hope to change the in-suite laundry exclusion for all owners, I find there is no equitable reason to carve out an exception for Mr. Sopher. Fairness dictates that he should be treated similarly to all the other owners in the residential units.

[36] The reason and logic behind the second explanation for denial given by the Condo Corp is slightly murkier. The Condo Corp's rational is that the infrastructure of the building was not designed for in-suite laundry and that, should all owners install in-suite laundry, backups could occur on the first floor. This explanation could be seen to be predicated on the belief that owners with in-suite laundry would use more water than if they had to rely on only the common laundry facilities. In that regard, Mr. Sopher avers that his laundry unit uses less water as it is a high efficiency unit. I am unsure there is a rational basis for believing that owners with in-suite laundry would use their laundry units more than if they had to pay for laundry. It would seem that if an

individual can afford a Condo in downtown Saskatoon, they are likely not restricted by the few dollars they may pay a week for laundry.

[37] However, there could be an appropriate load and timing concern related to the possibility that, if unit owners are not restricted to the limited use of the common laundry facilities, there is the potential for many owners to use their newly acquired in-suite washing machines at once which could overload the system and flood the users on the bottom floors when the capacity of the pipes is exceeded.

[38] However, I am not an expert plumber and no evidence was tendered by either party demonstrating the underlying rationale or lack of rationale for the Condo Corp's belief. I am not prepared to take judicial notice of the difficulties or lack of difficulties arising from the potential installation of in-suite laundry facilities. Given it is Mr. Sopher's onus to prove the breach and oppressive nature of the Condo Corp's conduct, I find that undermining the Condo Corp's belief would require positive evidence on Mr. Sopher's behalf. None exists. From a review of the documents provided in the affidavits, I find that the Condo Corp possessed a genuinely held belief that there were infrastructure issues with the plumbing so that units in the Condo Corp should not possess in-suite laundry. From that, I find that there is a genuine "floodgates" issue arising in that the Condo Corp, if it allowed Mr. Sopher to install the in-suite laundry, would thereafter have to allow all units to possess an amenity they believe could potentially cause damage to other units.

[39] Further, I do not find that the Condo Corp acted in bad faith by not providing certain pieces of requested disclosure pertaining to the evaluation completed by the plumber. The Condo Corp is not a quasi-governmental organization with unlimited resources that allow it to engage in extensive due process inquiries. While it is akin to a democratic society, these corporations are usually made up of volunteers who are using funds that are limited by the amount of condominium owners in a

particular block. It is incumbent on the Court not to ascribe far-ranging, onerous duties upon them but to recognize their limited means in balancing the competing interests involved. I find it is fair that the Condo Corp in this case provided the background reasoning pertaining to the evaluation performed by the plumber. I do not find any bad faith in the Condo Corp refusing to perform an extensive search for documentation akin to a freedom of information request.

[40] With respect to the third explanation for denial relating to the increased common expense fees as a result of Mr. Sopher's increased water usage and in not using the common laundry pay facilities, I find that, by itself, this would not be a fair or logical justification for the denial of the in-suite laundry. Firstly, I am not convinced that Mr. Sopher would use more water having an in-suite laundry. In fact, given his high efficiency unit, it may be likely he would be using less. Secondly, with respect to the circumvention of the pay laundry, I find that simply charging Mr. Sopher more per month, which he accepts, would remedy that concern and ensure fairness to all in the residential units.

[41] While I may question part of the rational with respect to two of the explanations given, it is more than clear that, read as a whole, none of these explanations given by the Condo Corp, whether they were made by counsel or someone acting on the Condo Corp's behalf, were made with any sort of bad faith. All the concerns stated in all three explanations involve concern for the larger membership with the overriding concern that Mr. Sopher not be treated differently than anyone else in the building. Further, with respect to the secondary concern related to apparent infrastructure issues which may negatively affect the entire membership, I find that the motivations of the Condo Corp were genuine expressions of concern and, as it pertains to conduct, not oppressive in any way.

Unfairly Prejudicial

[42] Unfairly prejudicial conduct involves conduct by the Condo Corp in this matter that may have treated Mr. Sopher differently from those in a similar situation.

[43] I find it clear from the previous discussion that the Condo Corp was focused on ensuring that Mr. Sopher was treated in the exact same fashion as the rest of the unit owners in the building. I find that it was Mr. Sopher who was attempting to carve out an exception for himself. Unlike others, he did not ask for permission for alterations to his Condo. Unlike others, he installed in-suite laundry. So that all owners have similar amenities and to ensure fairness, I find the Condo Corp requested that Mr. Sopher uninstall his in-suite laundry. While I have found some minor issues with respect to the rationale of the Condo Corp related to the infrastructure and communal pay concerns, I still find that those concerns were motivated to ensure fairness for all the owners in the building. The Condo Corp wanted Mr. Sopher to follow the rules that all other owners were required to follow.

[44] Therefore, I find there was no unfairly prejudicial conduct on behalf of the Condo Corp towards Mr. Sopher in this matter.

Unfair Disregard of Interests

[45] In scrutinizing whether Mr. Sopher's interests were unfairly disregarded, I must determine whether the Condo Corp unjustly treated Mr. Sopher's legitimate minority interests as being of no importance. In more colloquial language, I should determine whether Mr. Sopher's desire to have in-suite laundry was unjustly "brushed off".

[46] In reviewing this ground, I will presume that Mr. Sopher's interest in having in-suite laundry was legitimate despite previously finding that his expectation

in that regard was unreasonable given that this inquiry presumes an error on my part in finding his expectation unreasonable.

[47] When examining how the Condo Corp treated Mr. Sopher's desire, I find that his concerns were not unjustly dismissed out of hand without rational explanations. He was (eventually) provided with three specific reasons why his request was denied. While the Condo Corp did not provide the underlying scientific basis for their concerns with respect to the plumbing and water usage issues, I find that the reasons related to the evaluation of the plumber in the past were provided to Mr. Sopher in good faith and were not invented reasons solely made for the purpose of denying his claim. As previously mentioned, the building never had in-suite laundry for the individual units. I find it is a legitimate concern to raise on behalf of the Condo Corp that there may be infrastructure issues in installing large appliances beyond the design of the high rise building with potential issues for all owners.

[48] In this specific factual matrix with regard to the affidavit evidence provided, I find Mr. Sopher would have to provide some evidence to rebut the concerns of the Condo Corp. He did not. On the whole of the three explanations given and given my conclusions with respect to the equitable concerns of the Condo Corp, I find that Mr. Sopher's interests were not dismissed as being of no importance.

[49] While the Condo Corp did indicate that their reasons were not "up for debate" which in some contexts might be considered a brush-off, I do not find that to be the case here. In this matter, the Condo Corp stated that they had previously considered the issue and, at some point, noted they had a plumber evaluate the infrastructure. It was clear that the matter had been examined before and they did not wish to examine the issue again. If they had never examined the issue in the first place, I may have found that Mr. Sopher's request to have been unjustly dismissed as being of no importance. However, the previously noted consideration indicates prior

examination of the issue. Fairness does not require the Board to "re-hash" issues that have previously been debated.

[50] Further, this was not a situation where the Condo Corp refused to engage Mr. Sopher in reasoned discussion of the issue. The factual record reveals that, while the debate over in-suite laundry was ongoing, extensions of time with respect to the Condo Corp's demand for removal were made. Reasoned and civil discussions between parties do not need to involve compromise by one party. Having reviewed the discussions between Mr. Sopher and the Condo Corp, I find that Mr. Sopher was fairly dealt with during this dispute.

[51] Therefore, I find that if Mr. Sopher had a reasonable expectation to install in-suite laundry that was breached or threatened to be breached, the conduct of the Condo Corp was not oppressive, not unfairly prejudicial and did not unfairly disregard Mr. Sopher's interest.

Costs

[52] Given the Condo Corp has been wholly successful in their application and noting both parties had complete materials that did not necessitate response briefs or affidavits, I award the Condo Corp costs in column 1.

J.

J.P. MORRALL