

CITATION: Ron John William Dowell et al. v. York Condominium Corporation No. 403,
2023 ONSC 5219

COURT FILE NO.: CV-20-00645891-0000 and CV-21-00662478-0000

DATE: 2023-09-15

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: RON JOHN WILLIAM DOWDELL AND
THE ESTATE OF ADA YUEN HAN DOWDELL BY
HER ESTATE TRUSTEE, RON JOHN WILLIAM DOWDELL,
Plaintiff(s)/Applicant(s)

AND:

YORK CONDOMINIUM CORPORATION NO. 403, Defendant(s)/
Respondent(s)

AND BETWEEN:

YORK CONDOMINIUM CORPORATION NO. 403, Plaintiff(s)/Applicant(s)

AND:

RON JOHN WILLIAM DOWDELL AND THE ESTATE OF ADA YUEN HAN
DOWDELL BY HER ESTATE TRUSTEE, RON JOHN WILLIAM DOWDELL,
Defendant(s)/ Respondent(s)

BEFORE: Cavanagh J.

COUNSEL: Fatima Vieira, for Ron John William Dowdell and the Estate of Ada Yuen Han
Dowdell by her Estate trustee, Ron John William Dowdell

Karen Kisiel, for York Condominium Corporation No. 403

HEARD: June 14, 2023

ENDORSEMENT

[1] York Condominium Corporation No. 403 (“YCC 403”) is a residential condominium corporation under the *Condominium Act, 1988*, S.O. 1998, c 19 (the “Act”) and was created in 1978. The property governed by YCC 403 is a 13-floor high-rise building consisting of 119 residential units and appurtenant common elements located at 40 Bay Mills Blvd., Scarborough, ON.

[2] Ron John William Dowdell and the Estate of Ada Yuen Han Dowdell by her Estate Trustee, Ron John William Dowdell (the “Dowdell Parties”) are the owners of residential unit PH101

located on the 12th floor and residential unit 605 located on the 6th floor of the condominium building.

[3] The Dowdell Parties commenced an application against YCC 403 claiming declaratory and other relief under the Act.

[4] YCC 403 commenced a separate application against the Dowdell Parties claiming declaratory and other relief under the Act.

[5] For the following reasons, I grant the Application by the YCC parties, in part, and I dismiss the application by the Dowdell Parties.

Background Facts

[6] The penthouse unit owned by the Dowdell Parties has a balcony which is a common element for the exclusive use of unit PH101. The balcony spans the full width of the unit. Balconies on lower floors span either the living room width or the bedroom width. Below the penthouse level on the 12th floor is a column of windows of other units which are not accessible from the balconies of those units.

[7] The building has anchors on the roof. An anchor is something to which a cable or rope can be attached to secure the end of the cable or rope. The roof anchors are used by building maintenance personnel to secure their cables to swing stages and other similar equipment.

[8] The building also has anchors under the ceiling of the penthouse one unit balconies, including PH101. These anchors were installed in 2002.

[9] The building ceiling anchors are semicircular pieces of stainless steel welded to stainless steel plates, which are held in place by nuts on four threaded rods which are friction fitted and glued into holes drilled into the concrete ceiling of the PH one level balconies. The balcony floor has holes through which cables or ropes may pass. Exterior maintenance contractors can use the holes on the concrete balcony floor to secure their own, separate, floor anchors. The balcony floor anchors are portable metal structures which may be used by exterior maintenance contractors, which sit over a hole in the floor to support a hanging cable.

[10] For a number of years, YCC gained entry to the balcony on PH101 through the unit owned by the Dowdell Parties for the purposes of (i) conducting annual inspections of the anchor system as required by the Building Code, (ii) conducting load testing of the anchor system every five years as required by the Building Code, and (iii) using the anchors and holes in the balcony of PH101 to, annually, install equipment and clean the exterior inaccessible windows of units below PH101.

[11] The evidence given on behalf of YCC 403 is that whenever access to the balcony anchors was required, YCC 403 provided all PH one level owners, including the Dowdell parties, with advance written notice of the required entry into their respective residential units to access the balconies and balcony anchors.

[12] Since May 2018, the Dowdell Parties have refused to permit access to YCC 403 through their unit to access the balcony and anchor bolts located on the balcony. The Dowdell Parties changed the locks to their unit such that YCC 403 is unable to gain access to the balcony of unit PH101.

[13] The Dowdell Parties contend that YCC 403 is required by the Declaration to maintain all exterior windows of units in the building and that it must do so utilizing contractors with equipment connected and suspended from the exterior of the building as opposed to going through his unit to position window-washing equipment from the penthouse 1 units' balconies over the inaccessible column of windows under them.

Analysis

[14] Both applications are before me. Both were heard together. I address each in turn.

Application by the Dowdell Parties

[15] The Dowdell Parties bring an application against YCC 403 seeking:

- a. A declaration that YCC 403 has breached section 17 and 90 of the Act as well as the Declaration;
- b. A declaration that the conduct of YCC 403 is oppressive and/or unfairly prejudicial to and/or unfairly disregards the interests of the Dowdell Parties;
- c. An order that YCC 403 comply with sections 17 and 90 of the Act and the Declaration by maintaining and repairing the common elements, namely, the exterior common element windows by means of standard exterior maintenance apparatus such as a swing stage;
- d. An order restraining YCC 403 from seeking or demanding entry to the unit owned by the Dowdell Parties pursuant to section 19 of the Act;
- e. An order awarding damages in the amount of \$50,000 for oppression and for loss of enjoyment of his unit and breach of the right of privacy of Mr. Dowdell within his unit.

Claim for an order for compliance with YCC 403's obligation to maintain exterior window surfaces

[16] The Dowdell Parties contend that YCC 403 has failed to maintain the exterior of the building and that it selectively maintains the exterior windows of units.

[17] Mr. Dowdell objects to YCC 403 going through his residence (and other penthouse owners' residences) to position window washing and other exterior maintenance equipment from the penthouse unit balconies over the inaccessible column of windows under them. He submits that YCC 403 is required to maintain all the building exterior using contractors with equipment

connected and suspended from the exterior. Mr. Dowdell contends that window washers who go through his unit cause him a great deal of disruption and nuisance and interfere with his privacy.

[18] The Dowdell Parties seek an order under ss. 134 and 135 of the *Act* for compliance with YCC 403's obligation under the Declaration to maintain the exterior of all units from the exterior and, if necessary, Mr. Dowdell's exclusive-use common element balcony. The Dowdell Parties also seek an order for compliance with what it contends is YCC 403's duty to directly access the separate exterior balcony to perform its objective with respect to the exterior balcony unit, and not the residential unit.

[19] Section 17(1) of the *Act* provides that the objects of the condominium corporation are to manage the property and the assets, if any, of the corporation on behalf of the owners. Under s. 17(2) of the *Act*, the condominium corporation has a duty to control, manage and administer the common elements and the assets of the condominium corporation.

[20] Section 90 of the *Act* provides that the condominium corporation shall maintain the common elements and each owner shall maintain the owner's unit.

[21] Section 134(1) of the *Act* provides:

Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of the unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this *Act*, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.

[22] Section 8 of the *Declaration* reads:

The Corporation shall repair the common elements after damage and maintain all the common elements except the interior surfaces of windows in the units. Each owner shall repair his unit after damage and maintain his unit and the interior surfaces of windows in his unit.

[23] YCC 403 provided evidence that it has never cleaned the exterior window surfaces which are accessible from the balconies of units because, just as with interior unit side surfaces of windows, unit owners can readily access and clean these windows themselves without special expertise or specialized equipment. YCC 403 has provided evidence from its property manager since 2004 that in the years that she has been managing YCC 403, she does not recall any other owner complaining that YCC 403 does not clean the balcony accessible windows. YCC 403 provided evidence from its current President of the Board (and a Board member since 1993) that the Board has never received any complaints or requests from owners that YCC 403 also wash the exterior of accessible windows until the request by the Dowdell Parties.

[24] Mr. Dowdell provided evidence that window washing contractors that were used in 2003 and 2004 performed all the work from the building exterior and they did not go through his unit. Mr. Dowdell's evidence is that after two years, that company was replaced by window washers passing through his unit again.

[25] YCC 403 provided evidence that the cost to clean the inaccessible window surfaces using a swing stage has become prohibitive and was the impetus for the Board's decision in 2022 to retain a window cleaner using a less expensive method.

[26] In determining whether a condominium corporation has satisfied or breached its statutory duties to repair and maintain the common elements, courts apply a test of reasonableness. Whether a condominium corporation has breached its repair and maintenance obligation is a fact-specific inquiry in the particular circumstances. See *Ryan v. York Condominium Corporation No. 340*, 2016 ONSC 2470, at paras. 68-71.

[27] In *Tharani Holdings Inc. v. Metropolitan Toronto Condominium Corporation No. 812*, ONSC 1125, the application judge dismissed an application for an order for remedies for alleged breaches of the *Act*, including through application of the oppression remedy in the *Act*. The application judge found that the alleged breaches of the *Act* and the by-laws amounted to little in substance and he was not satisfied that the applicant had shown that it had suffered any prejudice by the instances of non-disclosure that were the basis for the alleged breaches. The application judge exercised his discretion not to order a remedy for the breaches and dismissed the application. On appeal, the Court of Appeal, at para.10, held that in the absence of actual harm to the applicant, it was within the discretion of the application judge to decline to grant the remedy requested by the applicant. The Court of Appeal, at para. 11, held that the application judge reasonably concluded that, without evidence of harm or prejudice to the applicant, there was no basis for an oppression remedy or for any other remedy. See *Tharani Holdings Inc. v. Metropolitan Toronto Condominium Corporation No. 812*, 2022 ONCA 93.

[28] On the evidence before me, I am satisfied that YCC 403 has not failed to comply with its duty to maintain the windows. There are 119 residential units in the building, all with balconies and balcony accessible windows. It is reasonable that YCC 403 only clean the inaccessible exterior window surfaces. For many years, all owners have cleaned the balcony accessible exterior surfaces windows without complaint. This approach results in a cost saving which benefits all owners. The Dowdell Parties have not shown that they have suffered material harm, other than minor inconvenience, for which a remedy is required. I am satisfied that to require YCC 403 to access the balconies through the exterior of the building and also clean the accessible windows is, in the circumstances, unreasonable.

[29] I decline to grant the remedy requested by the Dowdell Parties.

Claim for relief for oppression pursuant to s. 134 of the *Act*

[30] The Dowdell Parties submit that Mr. Dowdell has a reasonable expectation that his right to quiet enjoyment of his unit would not be interfered with by YCC 403. He contends that YCC 403 has unfairly disregarded his interests along with those of other penthouse owners by requiring

access through his unit for exterior maintenance of other units while reasonable alternatives were available.

[31] In my decision on the application by YCC 403, below, I conclude that YCC 403 is not acting unreasonably by requiring access to the balcony of unit PH 101 through the unit owned by the Dowdell Parties.

[32] The Dowdell Parties have failed to show that YCC 403 has engaged in conduct that is or threatens to be oppressive or unfairly prejudicial to them or unfairly disregards their interests.

Claim for relief pursuant to s. 97 of the Act

[33] In their factum for this application, the Dowdell Parties contend that YCC 403 breached s. 97(3) of the *Act* which addresses changes to common elements and assets because the balcony roof anchors are not original to the building and were installed by YCC 403 without notice having been provided to the owners. No relief is sought for this alleged breach in the Notice of Application of the Dowdell Parties and no request for relief is made in their main factum for the application.

[34] In their reply factum, the Dowdell Parties state that the fact that YCC 403 did not comply with s. 97 of the *Act* was discovered after the cross-examination of YCC 403's President and, as a result, the Notice of Application seeking an order for compliance under s. 134 of the *Act* did not include a specific order for compliance with s. 97. The Dowdell Parties state that they seek an order for compliance under s. 97 as part of the relief requested on their application.

[35] YCC 403 objects to this relief being sought for the first time in the Dowdell Parties' reply factum and without a claim for this relief in their Notice of Application.

[36] In the absence of a claim for relief for an alleged breach of s. 97(3) of the *Act*, and where the claim for relief was first made in the reply factum of the Dowdell Parties, I do not regard this claim to have been properly made, and I decline to adjudicate it on this application. To do so would, in my view, be unfair to YCC 403.

[37] If I have erred in this respect, I go on to address this claim on the evidence before me.

[38] Section 97(3) of the *Act* provides that a condominium corporation may make an addition, alteration or improvement to the common elements, change in the assets of the corporation or a change in a service that the Corporation provides to the owners if the corporation has sent a notice to the owners that (i) describes the proposed addition, alteration, improvement or change, (ii) contains a statement of the estimated cost of the proposed addition, alteration, improvement or change indicating the manner in which the corporation proposes to pay the cost, (iii) specifies that the owners have the right, in accordance with section 46 and within 30 days of receiving the notice, to requisition a meeting of owners, and (iv) contains a copy of section 46 and section 97; and (b) one of the following conditions has been met: 1. The owners have not requisitioned a meeting in accordance with section 46 within 30 days of receiving a notice under clause (a). 2. The owners have requisitioned a meeting in accordance with section 46 within 30 days of receiving notice under clause (a) but have not voted against the proposed addition, alteration, improvement or change at the meeting.

[39] YCC 403 accepts that the building anchors were not original to the building and that they were installed by YCC 403 in 2002.

[40] David De-Arruda, a director of the board of directors of YCC 403 and its President, provides affidavit evidence that in or around 2002, the Board was advised that additional balcony roof anchors were required to be installed in order to comply with new government requirements. His recollection from that time is that this requirement was implemented as an additional safety measure to protect workers while working from heights in response to a number of swing stage accidents. Mr. De-Arruda gives evidence that YCC 403 installed the additional balcony roof anchors in or around 2002. Mr. De-Arruda does not recall what the Board advised the owners at the time, however, the Board would not have undertaken the work if it was not necessary.

[41] Section 97(2)(a) of the *Act* provides that a condominium corporation may, by resolution of the board and without notice to the owners, make an addition, alteration or improvement to the common elements if it is necessary to make the addition, alteration, improvement or change to comply with the requirements imposed by any general or special *Act* or regulations or by-laws made under that *Act*.

[42] YCC 403 submits that the balcony roof anchors and those on the buildings' roof comprise the anchor system required by section 4.4.4.1. of the Building Code, O Reg 332/12.

[43] YCC 403 provided an affidavit from Steve Dale, a project manager with a company specializing in the design, installation, manufacture, repair, training, certification, inspection/testing and rental of various fall protection systems and devices which are used when workers are working from heights. The company that employs Mr. Dale has been performing the inspections and testing of the anchor systems located on the building since in or around 2003 and he has been directly involved in arranging for this work with YCC 403's property manager.

[44] Mr. Dale's evidence is that it was proper for YCC 403 to undertake installation of the balcony roof anchors because they are required by the Ontario Building Code and other legislation pertaining to worker's safety when working from heights.

[45] The Dowdell Parties say that there is no requirement to have permanent anchors on the balcony ceiling and they cite section 4.4.4.1.(3) of the Building Code which states that "[o]ther anchor systems may be used where such systems provide an equal level of safety ...". The Dowdell Parties submit that this provision of the Building Code leaves it in the discretion of the contractor performing the work to comply with the applicable regulations.

[46] I accept Mr. Dale's evidence that an anchor system is required by the Building Code. Although it may have been possible for another anchor system to have been installed, on the evidence before me, I am unable to find that the board acted unreasonably in authorizing the installation of an anchor system using the balcony roof anchors that were installed in 2002.

[47] If this claim had been pleaded in the Notice of Application, I would have concluded that YCC 403 did not fail to comply with s. 97(3) of the *Act* because the balcony roof anchors are part of an anchor system that is required under section 4.4.4.1. of the Building Code.

Application by YCC 403

[48] York Condominium Corporation No. 403 (“YCC 403”) brings an application against Ron John William Dowdell and the Estate of Ada Yuen Han Dowdell by her Estate Trustee, Ron John William Dowdell (the “Dowdell Parties”) seeking:

- a. a declaration that the Dowdell Parties are in breach of s. 19 of the *Condominium Act, 1998* (the “*Act*”) in refusing to permit YCC 403 and/or its authorized agents entry into their residential unit PH 101 for the purpose of connecting to and/or inspecting and/or testing the roof anchor system located on the balcony to their residential unit;
- b. a declaration that the Dowdell Parties’ refusal is oppressive, unfairly prejudicial and/or unfairly disregards the interests of YCC 403 in contravention of section 135 of the *Act*;
- c. an Order that the Dowdell Parties are required to permit entry into the residential unit PH 101 by YCC 403 and/or its authorized agents for the purpose of accessing the roof anchor system located on the balcony to their residential unit upon receiving reasonable notice (48 hours) of such entry to the residential unit and balcony pursuant to section 19 of the *Act*;
- d. an Order that the Dowdell Parties shall provide YCC 403 with a copy of all keys to the locks on the front entry door to their residential units PH101 and 605.

[49] The main issue on the application by YCC 403 is whether it is entitled to an order declaring that the Dowdell Parties are in breach of s. 19 of the *Act* by refusing to allow access to the balcony of PH101 through the unit owned by the Dowdell Parties and whether a remedial order should be granted and directing them to comply with their obligations under s. 19 of the *Act*.

[50] Section 19 of the *Act* provides:

On giving reasonable notice, the corporation or a person authorized by the corporation may enter a unit or part of the common elements of which an owner has exclusive use at any reasonable time to perform the objects and duties of the corporation or to exercise the powers of the corporation.

[51] I must interpret s. 19 of the *Act* in its entire context, with regard to its ordinary and grammatical meaning, and in harmony with the scheme of the Act, the object of the Act and the intention of the legislature. See *Rooney v. Arcelor Mittal S.A.*, 2016 ONCA 630, at para. 38.

[52] The plain meaning of “or”, in ordinary usage, can be either inclusive (A or B or both) or exclusive (A or B, but not both), and it is up to the reader to decide which one the writer intended. See *Rooney*, at para. 46.

[53] I interpret the word “or”, as used in s. 19 of the *Act*, as inclusive in that a condominium corporation has a right to enter a unit or part of the common elements of which an owner has exclusive use, or both. This interpretation is consistent with the scheme of the *Act* which places obligations on a condominium corporation with respect to both units and common elements.

[54] YCC 403 submits that it has a duty to maintain the common elements and repair them after damages. It submits that the inspection and testing of the common element balcony anchors and the annual cleaning of the common element windows constitute maintenance and are clearly duties of YCC 403.

[55] Pursuant to sections 89(1) and 90(1) of the *Act*, and section 8 of the *Declaration*, YCC 403 has a duty to both maintain the common elements and repair the common elements after damage. The inspection and testing of the common element balcony anchors and the annual cleaning of the common element windows constitute maintenance and are duties of YCC 403.

[56] YCC 403 relies on evidence that if access is not given to inspectors via the unit, a swing stage will need to be used to access the balcony anchors at an additional cost to YCC 403. YCC 403 relies on evidence that in 2021, the projected cost to perform the inspection of the anchor system was \$750 plus HST with an additional cost of \$950 plus HST to access the PH 101 balcony via the exterior. The board of YCC 403 was concerned that if other PH 1 level owners also refused access, the projected cost to access all balconies via the exterior in 2021 would have been \$3,550. In 2022, the projected additional cost to access the PH 101 balcony via the exterior increased to \$1,350. YCC 403 relies on evidence that if access is not provided to the inspector to perform the five-year load test of the balcony anchors in 2023, the additional cost will be \$1,930 plus HST. YCC 403 relies on evidence that if it is required to retain a contractor to perform the annual window cleaning in 2023 using a swing stage, the additional cost for the contractor to access the balcony anchors via the exterior will be \$150 per unit for a total projected additional cost of \$1,500 if all PH 1 level owners also refuse access via their units.

[57] YCC 403 relies on evidence that most of the owners of units are senior citizens who are on fixed incomes and that the corporation is already been facing increasing costs with an aging building, increasing utility costs, and significant increases in the costs of required maintenance and repairs with the COVID 19 pandemic. The position of YCC 403 is that it does not have money in its budget for additional costs that can otherwise be avoided. The evidence given on behalf of YCC 403 is that it takes the inspector 5 minutes to inspect and 10 minutes to load test the balcony anchors to each PH1 level balcony when access is provided the of the unit. It takes approximate 5 to 10 minutes for contractor to connect and then disconnect their swing state to the balcony anchors when access is provided via the unit. YCC 403, through its witness, expresses concern that there will be additional time and effort needed in arranging for alternative means of access with various contractors which could result in unnecessary delays where, for example, access via the exterior is impeded due to weather conditions.

[58] The Dowdell Parties oppose an order allowing YCC 403 to gain access to the balcony anchors on the balcony through their unit for the following reasons:

- a. YCC 403 does not need to use the balcony anchors and holes on the balcony to perform window cleaning work on windows underneath the PH1 level balconies because of the over hanging balconies because it is possible for YCC 403 and contractors retained by it to conduct window cleaning using different a different method, as was done in 2022.
- b. It is possible to inspect the balcony anchors by using a camera from an adjacent balcony.
- c. YCC 403 does not need to access the balcony to PH101 via the unit. An alternative method of accessing the balcony can be used.
- d. YCC's position that there would be an additional cost for contractors to gain access to the balcony from the exterior of the unit is without foundation. Even if there is an additional cost, the cost must be weighed against the interest of the unit owner in not having access to the balcony through the unit. The additional cost is not unreasonable in the circumstances.
- e. The written notices given by YCC 403 for access through the unit to the balcony have been improper and less than candid.
- f. Section 19 of the *Act* does not apply where access to a unit is not for the purpose of maintaining this unit, rather, YCC 403 wishes to have access to the unit to gain access to the balcony to use it as a staging ground for partial exterior maintenance of *other* units.
- g. When YCC 403 has been given access to the balcony through the unit, the contractors hired by YCC 403 have engaged in activities which constituted a nuisance because of the need for Mr. Dowdell to put down protective drop sheets and move breakable objects and sensitive papers.

[59] Section 19 of the *Act* should not be given a narrow interpretation. It should be read as an empowering section, conferring broad powers on the condominium corporation. See *Eglinton Place Inc. v. Ontario (Ministry of Consumer and Commercial Relations)*, 2000 CanLII 22336 (ON SC), at para. 33.

[60] Mr. Dowdell says that he denied access to YCC 403 to PH101 because YCC 403 access is not for the purpose of maintaining this unit, rather, YCC 403 seeks access to maintain the exterior of other units. There is no requirement in s. 19 of the *Act* that the performance of the object or duty or the exercise of the powers of the condominium corporation must be carried out with respect to the particular unit or exclusive use common element being entered.

[61] Mr. Dowdell says that he also denied the requests of YCC 403 to access to PH 101 because the access constitutes a nuisance and access is not needed to comply with YCC 403's legal obligations or to perform exterior maintenance. I accept the evidence given on behalf of YCC 403 that such access is reasonably necessary and cost effective. Although such access may result in

minor inconvenience to Mr. Dowdell, I am not satisfied that he has shown that access constitutes a nuisance because he has had to move breakable objects or put down protective drop sheets.

[62] The corollary of the right of YCC 403 to enter PH 101 on reasonable notice under s. 19 of the *Act* is an obligation on the part of Mr. Dowdell not to interfere with its access. Given the position taken by the Dowdell Parties, YCC 403 is within its rights to seek the court's assistance under s. 134(1) of the *Act*. See *Metropolitan Toronto Condominium Corporation No. 1328 v. 2145401 Ontario Inc.*, 2019 ONSC 733, at para. 31.

[63] I am satisfied that YCC 403 has not acted capriciously or unreasonably in requiring access to the balcony of PH 1 and balcony anchors on the balcony through the unit owned by the Dowdell Parties. I accept the submission of YCC 403 that it would be unreasonable to require YCC 403 to incur the additional costs to access the balcony via the exterior of the building. Other unit owners are subject to the same obligation and have complied.

[64] In *York Condominium Corporation No. 137 v. Hayes*, 2012 ONSC 4590, Penny J., at paras. 22-23, addressed the approach that should be taken by the court on an application for an order enforcing compliance with the *Act*:

By the terms of the statute, the condominium has the duty to effect compliance by the owners of units. Moreover, the *Act* gives the condominium the right to require compliance by the owners. Where most unit owners are following the rules, the court is, in effect, "duty-bound" in the exercise of discretion to give the condominium the assistance of the court. One of the advantages of requiring compliance is that a message is sent, by the board and the court, to unit owners that the declaration, by-laws and rules are in place for a good reason and that they will be enforced. To permit noncompliance opens the door to the noncompliance of other unit owners [citations omitted].

The general message should be that enforcement will be expected and exceptions will be rare. This is to foster the result that people only move into the condominium if they are prepared to live by the rules of the community which they are joining. If they are not, they are perfectly free to join another community whose rules and regulations may be more in keeping with their particular individual needs, wishes or preferences. The provisions of the *Act* and the declaration, bylaws and rules are "vital to the integrity of the title acquired by" unit owners. Unit owners are not only bound by the rules and regulations but are "entitled to insist that other unit owners are similarly bound" [citation omitted].

[65] I agree with the comments made by Penny J. in the *Hayes* decision.

[66] I am satisfied that YCC 403 is entitled to access the balcony of PH 101 for the purpose of connecting to and/or inspecting and/or testing the roof anchor system located on the balcony of PH 101 and annual cleaning of the common element windows.

[67] YCC 403 submits that 48 hours written notice with entry being required during business hours (9:00 a.m. to 5:00 p.m.) for a weekday is reasonable. I accept that this notice is reasonable. Further, as performance of exterior work, including window washing, is dependent on the weather, a matter beyond the control of YCC 403, it is reasonable for YCC 403 to provide a range of dates when entry will be required.

[68] For these reasons, I am satisfied that YCC 403 is entitled to the declaratory relief it seeks under s. 19 of the *Act*. I also order Mr. Dowdell not to interfere with lawful entry to his unit by YCC 403. Mr. Dowdell is not required to be present at the appointed time, but he may be, at his option.

[69] Mr. Dowdell changed the locks to the two residential units owned by the Dowdell Parties. As a result, YCC 403 does not have keys to these units. Therefore, YCC 403 cannot gain independent access to the units. This is a particular concern if there is an emergency.

[70] The entry doors to the residential units, of which the locks are a part, are common elements for which YCC 403 has the responsibility to both maintain and repair after damage under the *Act* and *Declaration*. Owners do not have the right to change the locks without the approval of the Board, which was not obtained.

[71] YCC 403 submits that the refusal of the Dowdell Parties to provide keys to the two residential units constitutes an act or omission that has caused a condition to exist in the units or common elements that is likely to damage the property or cause an injury or an illness to an individual under s. 117 of the *Act*.

[72] Mr. Dowdell has agreed to provide YCC 403 with a set of keys provided that it complies, to his satisfaction, with the *Act*, *Declaration*, and rules respecting his right to quiet enjoyment of his residence. Mr. Dowdell submits that a compliance order is not needed because he will comply with his obligations if YCC 403 complies with its obligations as he sees them.

[73] Mr. Dowdell is not entitled to impose conditions to his obligation to provide keys to the units to YCC 403. Mr. Dowdell is required to provide a copy of the keys to his two units to YCC 403.

[74] As a result of my decision with respect to the application by YCC 403 for an order for compliance with s. 19 of the *Act*, I do not find it necessary to decide whether an order for compliance should be granted pursuant to the oppression remedy provision in s. 134 of the *Act*.

Disposition

[75] For these reasons:

- a. I grant the application by YCC 403 and make the following orders:

- i. I declare that the Dowdell Parties are in breach of s. 19 of the *Act* in refusing to permit YCC 403 or its authorized agents' entry into their residential unit PH 101 for the purpose of using or inspecting the balcony roof anchors (or parts thereof) located on the exclusive use common element balcony to their residential unit.
- ii. I order that:
 1. The Dowdell parties shall permit entry into their residential unit PH 101 by YCC 403 or its authorized agents for the purpose of accessing the balcony roof anchors or the holes in the balcony floor slab (or parts thereof) located on the balcony for the purpose of performing any maintenance or repairs to same, including their inspection and testing, and for the purpose of using the balcony anchor system (or parts thereof) to perform maintenance or repairs to the building, including window cleaning, upon receiving reasonable notice of such entry to the residential unit and balcony pursuant to s. 19 of the *Act* and, for such purpose, at least 48 hours prior written notice of entry constitutes reasonable notice under s. 19 of the *Act* for this purpose.
 2. In providing reasonable notice of entry, YCC 403 may specify a range of dates not to exceed five consecutive business days and a range of times between the hours of 9:00 a.m. to 5:00 p.m. during which entry may be required.
 3. The Dowdell parties shall forthwith provide YCC 403 with a copy of the keys to the locks on the front entry doors to their residential units PH 101 and 605.

b. I dismiss the application by the Dowdall Parties against YCC 403.

[76] If the parties are unable to resolve costs, they may make written submissions. YCC 403 may make written submission (not longer than 4 pages, excluding costs outline) within 10 days. The Dowdell Parties may make responding written submissions (also not longer than 4 pages) within 10 days thereafter. If so advised, YCC403 may make reply submissions (one page) within 5 days thereafter.

Cavanagh J.

Date: September 15, 2023