COURT OF APPEAL FOR ONTARIO

CITATION: Carleton Condominium Corporation No. 519 v. Ottawa-Carleton Standard Condominium Corporation No. 656, 2023 ONCA 848
DATE: 20231219
DOCKET: COA-23-CV-0433

Hourigan, Miller and Nordheimer JJ.A.

BETWEEN

Carleton Condominium Corporation No. 519

Applicant
(Respondent)

and

Ottawa-Carleton Standard Condominium Corporation No. 656*
and Carleton Condominium Corporation No. 522

Respondents
(Appellant*)

Antoni Casalinuovo and Jonathan Wright, for the appellant

Rodrigue Escayola and Graeme Macpherson, for the respondent

Heard: December 15, 2023

On appeal from the judgment of Justice Charles T. Hackland of the Superior Court of Justice, dated March 16, 2023, with reasons reported at 2023 ONSC 1780.

REASONS FOR DECISION

Overview

[1] This is a dispute between two condominium corporations. The appellant, 656, receives its supply of electricity through cables connected to equipment in an electrical vault located on the premises of the respondent, 519. Two of the circuits contained in the electrical vault are exclusively for the benefit of 656, and 656 has an easement providing it with access to the electrical vault. The electric switchgear ("ESG") contained in the vault has failed and must be replaced in order for both condominiums to continue to receive electrical power. The cost of replacement is significant. 656 refuses to contribute to the expense of replacing this critical infrastructure.

[2] The basis of 656's refusal is that the Declarations of each of the corporations, made under the *Condominium Act, 1998*, S.O. 1998, c. 19, make each corporation responsible for the maintenance and repair of its own common elements. 656's position is that although the ESG services 656, the ESG is the property of 519 and therefore its maintenance is the sole financial responsibility of 519 under its Declaration. It argues that there is nothing in either the *Condominium Act, 1998* or the Declarations that provides otherwise, and no contractual agreement to the contrary.

[3] 519 brought an application that 656 be ordered to pay a contribution to the replacement of the ESG and associated costs on the basis of the doctrine of unjust

enrichment. The application judge found that all of the elements of unjust enrichment were satisfied: (1) 656 would be enriched by receiving the benefit of continuing to receive electricity through the new ESG, (2) 519 would suffer a corresponding deprivation as a result of not receiving any payment, and (3) there is no juristic reason for the enrichment.

Analysis

[4] The appeal was dismissed following the conclusion of the appellant's submissions, with reasons to follow. These are our reasons.

[5] Although the appellant disputes that it receives any benefit from the ESG, that argument is untenable. But for a functioning ESG, 656 would not be able to receive electrical supply. Having access to the physical plant needed for electrical supply is an obvious benefit to 656. The appeal turns on the third element.

[6] The application judge appropriately applied the two step framework for determining the presence or absence of a juristic reason set out in *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, at paras. 43-45. The first step is to determine whether there is a juristic reason from established categories of obligation to justify the enrichment. If there is no juristic reason, the plaintiff has made out a *prima facie* case of unjust enrichment. The second step is to determine whether the *prima facie* case is rebuttable for any other reason, such as reasonable expectations of the parties. The burden at the second stage is on the defendant.

[7] 656 argues that the application judge erred in finding that there was no juristic reason for the enrichment. The juristic reason advanced by the appellant is twofold: 519's statutory obligation to maintain and repair the ESG, and the absence of any statutory or contractual obligation (a cost-sharing agreement) requiring 656 to make any contribution to 519.

[8] These are the same arguments rejected by the application judge. We are of the view that the application judge applied the correct legal test and made no error in his application of the facts to the law.

[9] With respect to the argument that 519 has a statutory obligation to maintain and repair the ESG for the benefit of 656 without compensation, we agree with the application judge's analysis. Neither the *Condominium Act, 1998* nor 519's Declaration establish such an obligation.

[10] With respect to the argument that the absence of a cost-sharing agreement constitutes a juristic reason, we again see no error in the application judge's conclusion. The appellant's resort to *TSCC No. 1633 v. TSCC No. 1809 and Baghai Development Ltd.*, 2017 ONSC 1372, is unavailing. The case does not stand for the proposition advanced by the appellant: that the absence of a cost-sharing agreement between the parties constitutes a juristic reason justifying the retention of a benefit without obligation to pay. As the respondent argues, if the absence of a contract between the parties constitutes a juristic reason to retain a

benefit, it would entirely oust the law of unjust enrichment in the context of disputes between condominium corporations.

[11] Furthermore, *TSSC No. 1633* is distinguishable on the basis that it dealt with a claim for a contribution to the maintenance of a shared driveway that was subject to an easement. There are well-established common law principles governing the obligations of servient tenements. None of them apply here. Although 656 has an easement over the lands of 519 for the purpose of accessing the electrical vault, the present dispute has nothing to do with maintenance of the lands subject to the easement.

DISPOSITION

[12] For these reasons, the appeal is dismissed. Costs of the appeal are awarded to the respondent in the amount of $16,400, inclusive of HST and disbursements.

“C.W. Hourigan J.A.”
“B.W. Miller J.A.”
“I.V.B Nordheimer J.A.”