CITATION: Gonzales v. York Condominium Corporation No. 242, 2024 ONSC 6372
COURT FILE NO.: CV-24-00715923-0000
DATE: 20241118

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Leigh Gonzales and Harvin Gonzales, Applicants

-and-

York Condominium Corporation No. 242, Respondent

BEFORE: Robert Centa J.

COUNSEL: Rodrigue Escayola, for the applicants

Megan Mackey, for the respondent

HEARD: November 4, 2024

ENDORSEMENT

[1] In November 2021, Leigh and Harvin Gonzales were in the market to buy a home. As part of their search, they viewed a residential condominium unit, Suite 133, at the respondent condominium corporation. The unit had a solarium, which the applicants appreciated, and it made the unit more desirable for them.

[2] The applicants were working with Maria Fe-Reyes, their real estate agent. On November 12, 2021, Ms. Fe-Reyes obtained a status certificate from the vendor's real estate agent. The condominium corporation had issued the status certificate on October 25, 2021. The applicants admit that they did not review the status certificate carefully and they did not review any of the attachments to the status certificate. Instead, they accepted and relied on Ms. Fe-Reyes' opinion that the status certificate was "clear and clean." As I will explain, I do not share Ms. Fe-Reyes' assessment.

[3] Because the applicants were anxious to purchase Suite 133, the applicants signed an agreement of purchase and sale on November 14, 2021. The applicants struck out many of the standard conditions that would operate in their favour. The applicants struck out the terms making their offer conditional on an inspection, terms for obtaining a further satisfactory status certificate within 10 days of the offer, and terms for obtaining insurance on the property. The applicants acknowledge that although the agreement of purchase and sale recommended that they obtain independent legal advice before they signed the offer, they did not do so and only contacted a lawyer to facilitate the closing of the transaction on December 3, 2021.

[4] In December 2022, the condominium corporation levied a 9.98 percent increase in common expenses due to rising costs at the condominium. The applicants objected to this increase.

[5] On April 17, 2023, the condominium corporation levied two $3.2 million special assessments to be paid in proportionate shares by the owners of the 161 residential units. The purpose of this assessment was to fund the replacement of balconies in the condominium that were deemed unsafe. The first instalment of the assessment was due on December 1, 2023. The applicants' share of that special assessment was $21,905.50. The applicants objected to paying this special assessment and did not pay. As a result, the condominium corporation placed a lien on their unit.

[6] In order to replace the balconies, it was necessary to demolish the applicants' solarium along with the three other solariums in the building. The board of the corporation initially took the position that owners would be responsible for the cost of demolishing the solariums because the solariums were exclusive use common elements. The board communicated this position in a letter dated January 25, 2024. The applicants refused to pay these amounts. The corporation then amended its position for all units with solariums. The corporation agreed to pay for the cost of demolishing the solariums and restoring the building envelope, providing that the solariums were not re-installed. The applicants objected to this plan because they wanted a solarium to be re-installed at the corporation's expense.

[7] After negotiations failed to resolve the dispute, the applicants commenced this application. They allege that the corporation issued a status certificate that was not accurate in two respects: first, it failed to make full and plain disclosure that the state of the balconies would lead to a significant assessment; second, it failed to make full disclosure of facts within its knowledge related to the solarium issues. Finally, the applicants submit that the corporation has engaged in oppressive behaviour, contrary to s. 135 of the *Condominium Act*.[1]

[8] As I will explain, I find that the status certificate dated October 21, 2021, was complete and accurate. It contained sufficient information to put the applicants on notice of recent concerning developments with some balconies. The status certificate was not required to provide any additional information about the solarium. I conclude that the applicants cannot avoid paying their fair share of the costs associated with the ongoing capital maintenance of the condominium.

[9] However, I do find that after the applicants moved in, the corporation engaged in bad faith and oppressive conduct towards them. In particular, the corporation sent the applicants an altered and falsified version of the status certificate dated October 21, 2021. The corporation then lied to the applicants for months about the authenticity of the status certificate. I find that the corporation did so in order to bolster its position regarding the solarium. Equally troubling, in the material filed on this application, the corporation offered no explanation for its circulation and reliance on an altered and falsified status certificate.

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[1] *Condominium Act, 1998*, S.O. 1998, c. 19.

I find that the corporation engaged in oppressive conduct toward the applicants, and I award the applicants $75,000 in damages.

Issue 1: Was the status certificate accurate?

[10] I will first describe the legislative framework governing status certificates. I will then assess whether the applicants relied on the status certificate and whether it was accurate.

A. Legislative Framework

[11] The *Condominium Act* is, among other things, consumer protection legislation that safeguards the interests of current and future unit owners.[2] Part V of the *Act* contains provisions dealing with the sale and lease of condominium units. Section 76 of the *Act* requires the corporation to give a dated status certificate to each person who requests one, in the prescribed form. It must contain a variety of organizational and financial information about the unit and the corporation as a whole.[3]

[12] The purpose of the status certificate is to bring to the attention of a prospective purchaser matters which may be of concern to them when contemplating the purchase of a unit.[4] Pursuant to s. 76 of the *Condominium Act* and s. 18 of O. Reg. 48/01, the status certificate must contain information under the following headings:

a. General information about the corporation;

b. Common expenses;

c. The budget for the corporation;

d. The reserve fund for the corporation;

e. Legal proceedings and claims involving the corporation;

f. Agreements with owners relating to changes to the common elements;

g. Leasing of units;

h. Substantial changes to the common elements, assets or services;

i. Insurance;

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[2] *Metropolitan Toronto Condominium Corporation No. 723 v. Reino*, 2018 ONCA 223.
[3] *Trez v. Wynford*, 2015 ONSC 2794, 63 R.P.R. (5th) 138, at para. 42; *Keele Medical Properties Ltd. v. TSCC 1786*, 2017 ONSC 1813, at para. 27; and *Bruce v. Waterloo North Condominium Corporation No. 26*, 2023 ONSC 2995, 43 B.L.R. (6th) 332, at para. 33.
[4] *Reino*, at para. 9.

j. Information, where applicable for phased, vacant land, or leasehold condominium corporations;

k. Attachments, which form part of the status certificate; and

l. A statement of the rights of the person requesting the certificate.

[13] The status certificate provides essential information about the physical and financial situation of the corporation, including any outstanding or expected claims or liabilities, major projects, or costs.[5] This information ensures that prospective buyers have enough information to assist them to make an informed purchase.[6]

B. Position of the parties

[14] In this case, the applicants submit that the corporation failed to provide accurate information in two parts of the status certificate:

a. in paragraph 12, a statement of what knowledge, if any, the corporation has of any circumstances that may result in an increase in the common expenses payable for the unit;[7] and

b. in paragraph 23, a statement about whether the parties have complied with all current agreements mentioned in clause 98(1)(b) of the *Act* with respect to the unit and a copy of all such agreements.[8]

[15] The corporation submits that paragraphs 12 and 23 of the status certificate were accurate and that they must also be read alongside:

a. paragraph 25, which contains a statement of those additions, alterations or improvements to the common elements, those changes in the assets of the corporation and those changes in a service of the corporation that are substantial and that the board has proposed but has not implemented, together with a statement of the purpose of the changes;[9] and

b. the attachments to the status certificate and, in particular, an October 1, 2021, engineering report.

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[5] *Bruce*, at para. 32.
[6] *Valentina Vasilescu Tarko et al. v. Metropolitan Toronto Condominium Corporation 626 (MTCC 626) et al.*, 2015 ONSC 982, 124 O.R. (3d) 360, at para. 28; *Orr v. Metropolitan Toronto Condominium Corporation No. 1056*, 2014 ONCA 855, 62 R.P.R. (5th) 1, at paras. 48, 69.
[7] See *General*, O. Reg. 48/01, at s. 18(1)(f).
[8] *Condominium Act*, at s. 76(1)(l); and *General*, O. Reg. 48/01, at s. 18(1)(k).
[9] *Condominium Act*, at s. 76(1)(n).

[16] I will first address the elements of the status certificate dealing with the balcony repair expenses. I will then address the elements of the status certificate that deal with the solarium.

C. The status certificate and the special assessment for the balcony replacement

[17] On October 25, 2021, the corporation issued a status certificate for Unit 133 in Form 13, as was required at the time. The key elements of the status certificate stated as follows:

> 12. The Corporation has no knowledge of any circumstances that may result in an increase in the common expenses for the unit, except for the Reserve Fund contribution schedule outlined in the Reserve Fund Study.
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> …
>
> 14. The most recent reserve fund study conducted for the board was a Class 2 Reserve Fund Study dated November 21, 2018 prepared by GRG Building Consultants Inc. The next reserve fund study will be conducted on [*sic*] November 2021.
>
> …
>
> 25. There are no additions, alterations or improvements to the common elements, changes in the assets of the Corporation or changes in a service of the Corporation that are substantial and that the board has proposed but has not implemented.
>
> The Corporation has received a report from Gillespie Engineering advising the balconies on the South elevation appear to pose a significant health risk and therefore must be closed off to any use on all floors until further review is carried out to determine the cause of this deficiency. This report is included in the Status Certificate attachments.

[18] As indicated, the report from Gillespie Engineering was included in the attachments to the status certificate. The report was dated October 1, 2021, only days before corporation released the status certificate dated October 25, 2021. The report was titled "Structural Integrity of Several Balconies on South Elevation Facing Freshmeadow Drive." It read as follows:

> On September 30, 2021, we visited site to review the installation of new steel channels that form part of reconstructing the balconies serving units 345 and 354. We are accompanied during this visit by Mr. M. Devlin (Principal - Devlin Engineering), Ms. I. Guevara (Project Manager - Devlin Engineering) and Mr. J. Liberatore (Project Supervisor – August).

> During this visit, the Site Foreman alerted us to "bulging" in several columns that support the outer edges of balconies- the affected balconies are shown in Figure 1 below.
>
> We visually reviewed the columns in question and noted that the columns are in fact out of plumb (see Photo #1) - where the columns are "bulging" corresponds to the existing steel channels that support the balustrade within the balcony construction. The existing arches at these balconies are split (see Photo #2).
>
> While the exact cause of this issue is unknown, we suspect that this is resulting from water penetration into the balcony construction through cracks in the existing concrete topping and slab, thereby adversely affecting the existing steel members within the balcony construction. The manner in which the arch is are split, coupled with the columns being out of plumb leads us to believe that the structural integrity of the existing construction may have been compromised. Based on the above, the balconies appear to pose a significant health risk and therefore must be closed off to any use on all floors until further review is carried out to determine the cause of this deficiency.

[19] The applicants submit that they relied on paragraph 12 of the status certificate and that this paragraph was not accurate. I disagree with both elements of the applicants' submission.

1. The applicants relied on their agent's incorrect opinion, not on the status certificate

[20] In her affidavit, Ms. Gonzales stated she relied on the status certificate, "believing it to be fulsome and true." The affidavit reads as follows:

> From the information found in the status certificate, we were satisfied that there would be no foreseeable financial surprises. Relying on this status certificate hand believing it to be fulsome and true, Harvin and I were confident that we could make an unconditional offer to purchase the unit.

[21] However, in cross-examination, Ms. Gonzales provided a much different version of events. It is clear from her cross-examination that, in fact, the applicants did not rely on the status certificate, they relied on what their real estate agent told them about the status certificate.

[22] Ms. Gonzales admitted that she quickly looked at Form 13 on her phone but that she never reviewed any of the attachments to the status certificate (including the Gillespie Engineering report). Indeed, she admitted that she did not even notice paragraph 25 of the status certificate, which disclosed that the balconies on the South elevation posed a significant health risk and were to be closed pending further review to determine the cause of this deficiency. Ultimately, Ms. Gonzales agreed that she relied on Ms. Fe-Reyes' opinion that the status certificate was clean and clear:

Q. So, what part of this did you look at?

A. I read - -

Q. You said you could only look at part of it, something about your laptop. What part did you read?

A. I read that -- that status certificate.

Q. The Form 13?

A. That's right.

Q. Okay. How long did you spend looking at this document?

A. I can't remember. It was quick.

Q. Five minutes?

A. I don't know. I relied on my realtor, Maria-Fe, to kind of guide me through this because I don't know much about this.

Q. So, this status certificate has a number of attachments to it, but I think you said you couldn't see the attachments on your device. Was that right?

A. Correct.

Q. At Paragraph 25, this document mentions a report from Gillespie Engineering that was attached. Did you notice this paragraph?

A. No.

Q. And you didn't read the report before making an offer to purchase?

A. We -- we were in a rush, so I scanned through it and my -- my realtor said, 'It looks clear and clean.' She is also an accountant, so I relied on her.

[23] I do not accept the evidence that Ms. Gonzales offered in her affidavit that she was "relying on this status certificate and believing it to be fulsome and true." Having reviewed the transcript of her cross-examination, I would be surprised if Ms. Gonzales, on her own, used the phrase "fulsome and true" to describe her assessment of the status certificate. That

language seems inappropriate to this witness.[10] Those words seem more likely to have been the product of careful drafting by counsel rather than words chosen and used by Ms. Gonzales in her own words. More importantly, when counsel for the corporation tested that evidence, Ms. Gonzales readily admitted that she quickly scanned the Form 13 on her phone, did not read any of the attachments, and did not even notice paragraph 25.

[24] Ultimately, Ms. Gonzales admitted what I find to be the facts: the applicants were in a rush and relied on Ms. Fe-Reyes' opinion that the certificate was clear and clean. In my view, there is a material difference between "relying on the status certificate" itself and relying on the opinion of a realtor that the status certificate "looks clear and clean."

[25] I do not accept Ms. Fe-Reyes' opinion that the certificate "looks clear and clean." It plainly does not. Not only did the corporation disclose the contents of the very recent Gillespie Engineering report in paragraph 25 of the status certificate, but it also attached the report to the status certificate. It is incorrect to state that this certificate "looks clear and clean." It does not.

[26] I find that the applicants relied on Ms. Fe-Reyes' incorrect opinion that the certificate "looks clear and clean," and not on the status certificate itself.

2. The condominium provided satisfactory disclosure in the status certificate

[27] Second, the applicants submit that the corporation did not meet its statutory obligations when it provided the status certificate dated October 25, 2021.

[28] In my view, the information provided in paragraph 12 must be read alongside the information provided in paragraph 25 and the attachments. One cannot read the answer to paragraph 12 in isolation from the balance of the status certificate. For convenience, the relevant paragraphs are set out again:

> 12. The Corporation has no knowledge of any circumstances that may result in an increase in the common expenses for the unit, except for the Reserve Fund contribution schedule outlined in the Reserve Fund Study.
>
> …
>
> 14. The most recent reserve fund study conducted for the board was a Class 2 Reserve Fund Study dated November 21, 2018 prepared by GRG Building Consultants Inc. The next reserve fund study will be conducted on [*sic*] November 2021.
>
> …

[10] *Konstan v. Berkovits*, 2023 ONSC 497, paras. 8 to 12, and *Prodigy Graphics Group Inc. v. Fitz-Andrews*, 2000 CarswellOnt 1178 (S.C.), at para. 46.

> 25. There are no additions, alterations or improvements to the common elements, changes in the assets of the Corporation or changes in a service of the Corporation that are substantial and that the board has proposed but has not implemented.
>
> The Corporation has received a report from Gillespie Engineering advising the balconies on the South elevation appear to pose a significant health risk and therefore must be closed off to any use on all floors until further review is carried out to determine the cause of this deficiency. This report is included in the Status Certificate attachments.

[29] The corporation also provided additional information to the purchaser including a warning about its budgeting schedule:

> (f) Budget
>
> Note that items 9, 10, 11 and 12, under the "Budget" heading in the body of the certificate, are applicable to the current fiscal year at the time this status certificate was prepared. The budget and the resultant common elements assessment for the next fiscal year are generally not available until mid to late December. Therefore, if this status certificate was prepared late in the year (e.g. October, November, or December), the common elements assessment for the next fiscal year (which starts January 1st) may differ from this certificate in item 6 under the "common expenses" heading.

[30] I find that on October 25, 2021, when the corporation issued the status certificate, the corporation did not know that a special assessment might be or would be required to remedy the balcony situation. As of that date, the corporation had $2.4 million in its reserve fund. On that date, it did not know that its reserve fund would not be sufficient to address this situation. It did note on the status certificate that a further reserve fund study would be completed in November 2021 to update the prior study which was completed three years earlier.

[31] There is no doubt that the board was actively involved in assessing the need for ongoing capital and maintenance projects at the corporation. The building was completed in 1975. It was far from a new build. The board understood that it needed to keep its eyes on the adequacy of the reserve fund and the need for capital maintenance and upgrades.

[32] Prior to the 2018 reserve fund study, the board received several engineering and restoration reports that outlined work to be done to the masonry and balconies. The 2018 reserve fund study contemplated and funded future balcony and patio repairs over a 10-year period. The reserve fund earmarked funds for replacing waterproofing, repairing concrete, and addressing masonry issues, and ensured that the recommended work could be accommodated and paid for without the need for special assessments. In addition, the status

certificate correctly disclosed that the next reserve fund study was to be completed imminently, in November 2021.

[33] Subsequent to the 2018 reserve fund study, the board continued to monitor the need for capital repairs and maintenance. In March 2019, the board approved instructing Gillespie Engineering to "further investigate masonry on third floor and provide costing for balconies" as the next phase of its work. Gillespie reported back to the board on April 15, 2019. The four-page memo read, in part, as follows:

> At the Board meeting that I attended on March 19, 2019, we discussed the condition of the balconies, particularly those on the upper levels that are partially enclosed by brick. Previous work installed a concrete topping on the semi-enclosed balconies to better direct water to a scupper.
>
> This has been partially effective except that there is some seepage around the scupper and staining on the brick below The topping has also reduced the height from the balcony floor to the top of the balustrade to below "Code" levels (the Ontario Building Code requires 42-1/8 inches (1070 mm) and the measured height varies depending on the location but 41-1/2 inches (1054) was common.)
>
> Of more concern, is the fact that the concrete topping has de-bonded and cracked such that water can now seep down to the top surface of the original concrete slab. Water seepage through cracks in the concrete will result in deterioration of the steel pan and joists below. Seepage around the perimeter may affect the support of the joists. During our review of the exterior carried out last year, we did not have access to the underside of the balconies to remove the soffit panels and check the condition of the steel pan and joists.
>
> Repairs to the existing configuration at the semi-enclosed balconies will consist of:
>
> > Removal of the debonded topping
> >
> > Re-design of the scupper to reduce the amount of water that saturates the brick below, and re-work of waterproofing details around the scupper
> >
> > Replacement of stained or damaged bricks.
> >
> > Investigation of the underside of the balcony to determine the condition of the steelpan and supporting joists.
>
> Deterioration of the steel pan or joists will require removal of the concrete balcony slab, replacement of the steelpan and re-pouring of

> the concrete. Clearly the costs to repair these fifth level balconies could become significant and difficult to quantify beforehand without an investigation of a large portion of the existing assemblies to determine the degree of deterioration.

[34] This work began in July 2021, with the reconstruction of the balconies for two third floor suites. On September 30, 2021, Gillespie came back to review the progress of the work. Gillespie identified serious concerns. It itemized these concerns in its report dated October 1, 2021. The corporation disclosed the existence and the main thrust of this report in paragraph 25 of the status certificate. Moreover, it attached the report to the status certificate.

[35] In my view, the status certificate accurately described the situation faced by the corporation on October 25, 2021. The answers to paragraphs 12 and 25 must be read together, along with the entire October 1, 2021, report from Gillespie Engineering, which was incorporated into the status certificate. The corporation disclosed everything it knew at that time, including the very recent report from Gillespie Engineering. As of October 25, 2021, the corporation had not been told that the dangerous situation identified by Gillespie Engineering would or might result in a special assessment or that it could not be remedied with the existing reserve fund and the annual contributions of the owners.[11]

[36] Similarly, in my view, the 2019 statement that the repairs to the fifth-floor balconies "could become significant" was insufficient in these circumstances to require the corporation to say anything further in paragraph 12 of the status certificate.

[37] In my view, as of October 25, 2021, the corporation did not have knowledge of a circumstance that may result in an increase in the common expenses because no expert had told them so. It was not obvious to an objective observer that the cost would be more than what the reserve fund contained and that it would require a special assessment or loan. To the extent that the Gillespie Engineering report dated October 1, 2021, might affect the future, the corporation disclosed the existence and the key findings of that report in the body of the status certificate. Paragraph 25 flagged in clear language the situation currently facing the corporation. In my view, paragraph 25 was sufficient to prompt the applicants to dig deeper into the situation to assess it for themselves.

[38] Unlike *Tarko*, this is not a case where there was a special assessment that had been passed to come into effect in the future.[12] Unlike *Bruce*, this is not a case where the auditor had advised the corporation that work to be commenced in the following fiscal year meant that "there is a possibility of a special assessment to the unit owners and/or an application for a loan."[13] Equally, this case is nothing like *Bruce* because this corporation disclosed the

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[11] There was a subsequent report from Gillespie Engineering on October 21, 2021, but it contained no new information that would have shed light on the situation.
[12] *Tarko*, at para. 28.
[13] *Bruce*, at para. 14.

information in its possession in paragraph 25 of the status certificate, not in a footnote to an auditor's report that was only an attachment to the certificate.

[39] I find that the corporation did not have knowledge of any circumstance that may result in an increase for the common expenses of the unit until February 2022, when the work on the new reserve fund study was completed. It was only then that the engineers recommended a special assessment of $7.2 million to fund repairs and maintenance of the common elements. From that point forward, the corporation was fixed with knowledge that would have required disclosure in paragraph 12 of a status certificate. However, as of October 25, 2021, the corporation did not have reason to believe that was the case. All that it knew on that date was contained in the Gillespie Engineering report. The corporation highlighted this report in the status certificate and attached it to the status certificate.

[40] I find that the corporation complied with the statutory and regulatory requirements in the status certificate issued on October 25, 2021. I find that the applicants' unit is not exempt from any special assessment, levy, loan, or obligation to contribute to the cost of maintaining, repairing, or replacing the balconies. Subject only to my finding below with respect to the oppressive conduct of the corporation, the applicants' unit is fully responsible for all future special assessments.

D. The status certificate and the solarium

[41] It appears that when the applicants purchased the unit, they believed that the solarium was part of their unit. It was not. The publicly available plans clearly indicate that the solarium was an alteration to the common elements of the building. The applicants had exclusive use of this portion of the common elements, but they did not have the same property rights over the solarium that they had over the portions of the building that were a part of their unit. Had the applicants retained a lawyer or asked their real estate agent to confirm these basic facts about the unit they intended to purchase, they would have known this before signing the agreement of purchase and sale.

[42] The applicants submit that the corporation erred because the status certificate did not describe the solarium as an alteration to the common elements. I disagree with the applicants' submission.

[43] The relevant portion of the status certificate reads as follows:

> 23. The unit is not subject to any agreement under clause 98(1)(b) of the *Condominium Act, 1998* or Section 24.6 of Ontario Regulation 48/01 (general) made under *Condominium Act, 1998* relating to additions, alterations or improvements to the common elements been sanctioned by the Corporation.

[44] Pursuant to the *Act* and its regulations, the status certificate must disclose all agreements described in clause 98(1)(b) and s. 24.6(3) of O. Reg. 48/01. If, and only if, the solarium was the subject of a s. 98 agreement, that agreement needed to be disclosed on the status certificate.

[45] However, I find that the solarium was not subject to a s. 98 agreement. The solarium was installed 15 years prior to the May 1, 2001, amendments to the *Act* that recognized s. 98 agreements. There was no statutory requirement to disclose the existence of agreements that pre-date May 1, 2001. The corporation accurately reported that the unit was not subject to any agreement under s. 98(1)(b).

[46] If the applicants wished to obtain further comfort beyond the statement in the status certificate, they could have sought representations or warranties from the vendor of the unit. They did not do so.

[47] In the alternative, the applicants submit that the potential for the costs associated with the solarium should have been disclosed in paragraph 12. I disagree. On October 25, 2021, there was no reason to believe that the solarium would need to be demolished. That only became clear much later when the balcony reconstruction was further advanced.

[48] I find that the applicants' unit is not exempt from any special assessment, levy, loan, or obligation to contribute to the cost of maintaining, repairing, or replacing the solarium. Subject only to my finding below with respect to the oppressive conduct of the corporation, the applicants' unit is fully responsible for all future special assessments.

Issue 2: Oppression remedy

[49] The applicants submit that the condominium corporation engaged in oppressive conduct toward them. For the reasons that follow, I agree.

A. Legislative Framework

[50] Section 135 of the *Act* creates a statutory oppression remedy that 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,
>
> > (a) an order prohibiting the conduct referred to in the application; and

(b) an order requiring the payment of compensation.

[51] Section 135 of the *Act* is drafted in the same language as the oppression remedies set out in the corporate statutes. Therefore, corporate law principles regarding oppression are applicable in determining what constitutes conduct that is oppressive, unfairly prejudicial, or that unfairly disregards the applicants' interests in the context of condominium law. Prior cases help us understand the type of conduct captured by each of these ideas:

a. Oppressive conduct is burdensome, harsh, and wrongful, and requires a finding of bad faith. Conduct that is unfairly prejudicial or that unfairly disregards the interests of the applicant does not require such a finding;[14]

b. Unfair prejudice means a limitation on or injury to an applicant's rights or interests that is unfair or inequitable;[15] and

c. Unfair disregard means to unjustly ignore or treat the interests of the complainant as being of no importance.[16]

[52] 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:

> 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*. 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

[14] *Brant Investments Ltd. v. Keeprite Inc*. (1991), 3 O.R. (3d) 289 (Ont. C.A.), at p. 305-306.
[15] *Walia Properties Ltd. v. York Condominium Corp. No. 478* (2007), 60 R.P.R. (4th) 203 (Ont. S.C.J.), at para. 23.
[16] *Niedermeier v. York Condominium Corp., No. 50* (2006), 45 R.P.R. (4th) 182, at para. 8; *Consolidated Enfield Corp. v. Blair* (1994), 19 B.L.R. (2d) 9 (Ont. Gen. Div.), at para. 80.

> complete picture of conduct that is unjust and inequitable, to return to the language of *Ebrahimi*.
>
> 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.
>
> 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.[17]

[53] Inaccurate disclosure to condominium purchasers can result in a finding of oppression.[18] I found that the status certificate dated October 25, 2021, which was provided to the applicants in November 2021, was accurate, so that does not give rise to any oppressive conduct. However, I reach a different conclusion with respect to the corporation's subsequent dealings with the applicants.

B. Position of the parties

[54] The applicants submit that the corporation engaged in oppressive conduct by sending them a falsified and misleading status certificate in April 2023 and then relying on that document to pressure them to pay costs associated with the demolition of the solarium.

[55] The corporation denies that its conduct was oppressive. For the reasons that follow, I disagree.

C. The corporation circulates and relies on a falsified and altered status certificate

[56] On April 27, 2023, the board of directors wrote to the applicants regarding the "current state of [their] exclusive-use common element patio and the upcoming exterior work." The letter detailed the changes to the common elements that went into the solarium. The letter then referenced disclosure made in the status certificate as justifying the charge-back of certain upcoming expenses:

> As part of the Corporation's due diligence, we have reviewed the Status Certificate for the Unit dated October 25, 2021, which confirms that the Unit was given approval by a previous board of

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[17] *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at paras. 89-91.
[18] *Toronto Standard Condominium Corporation No. 2051 v. Georgian Clairlea Inc.*, 2019 ONCA 43, 99 R.P.R. (5th) 177, at para. 23-29.

> directors, in 1986, to enclose the patio, but not to alter the common element walls surrounding the patio door and window opening. Approval was given on the condition that the enclosure would be removed, if necessary, upon the request of the Corporation, with all costs to be borne by the Unit owner. Furthermore, we are advised by the Corporation's engineer that the enclosure is likely not compliant with the Ontario Building Code and/or Ontario Fire Code.
>
> As you are likely aware, the Corporation is currently in the process of planning for extensive exterior work, which will require the removal of the patio enclosure and related finishes in order to install shoring and scaffolding in/on the patio. The Corporation's contractors will undertake this work and the costs incurred in doing so will he charged back to your Unit in the same manner as common expenses. The scaffolding will be installed as soon as possible, and will need to remain in place until the drop is addressed by contractor forces. Please ensure that all belongings inside your enclosed patio are removed by May 8, 2023. Any belongings that remain after that date are subject to removal by the contractor and set aside for disposal.
>
> It is the Corporation's policy that patio enclosures are not permitted at the building: therefore, upon completion of the exterior work and removal of the scaffolding, the Corporation's contractors will reinstate your patio to its original design. All costs incurred by the Corporation for removing the patio enclosure and reinstating the patio to its original design will be charged back to the Unit, in the same manner as common expenses.

[57] The letter indicated that any question should be addressed to Colin Ogg at Maple Ridge Community Management.

[58] On April 29, 2023, the applicants objected to the corporation’s position and indicated that they wished to reach an agreement with the corporation on how to proceed. On May 2, 2023, the applicants wrote to request a copy of the status certificated dated October 25, 2021, that the board mentioned reviewing in its letter dated April 27, 2023.

[59] On May 4, 2023, Jyoti Lakhani of Maple Ridge Community Management sent an email to the applicants attaching a document with the file name “20211025 Status Certificate Unit 133.” The status certificate attached to the email was similar but not identical to the original status certificate. Paragraph 23 of the 2023 version of the status certificate is set out below. For ease of reference, I will underline the text that did not appear in the original status certificate:

> 23. The unit is not subject to any agreement under clause 98 (1) (b) of the Condominium Act, 1998 or Section 24.6 of Ontario

Regulation 48/01 (general) made under Condominium Act, 1998 relating to additions, alterations or improvements to the common elements been sanctioned by the Corporation.

Solarium

However, in 1986 a prior owner of Unit 133 erected a solarium over and enclosing that portion of the patio on the exclusive-use common elements appurtenant to Unit 133 which is overlooked by the living room of Unit 133. The original sliding patio door and the original window set into the north wall of the patio were removed and not retained. Portions of the exterior masonry wall surrounding the patio door and window openings have been removed and/or modified. While permission of the board of directors of YCC242 was provided for erection I installation of the enclosure itself, no vote of owners pursuant to s.38 (1) of the then-existing Condominium Act authorized an alteration, addition to, improvement to or renovation of the exclusive-use elements, nor is there in effect an Owner's Alteration Agreement between Unit 133 and the Corporation in accordance with s.98 of the Condominium Act, 1998.

There is no indication that in 1986 the Corporation was aware of or gave permission for the changes to the common element walls that were done in conjunction with the installation of the patio enclosure. These changes consist of significant alterations to both the west and the north exterior walls of the original patio. However, since these events occurred more than 6 years ago, this is not significant with respect to past actions.

It is the owner's responsibility to regularly repair, maintain and clean the enclosed solarium. In addition, the unit owner assumes all liabilities for any damage caused to the common elements of YCC242 by any aspect of the solarium.

If and when, at some future time, there is a need or desire for removal of the patio enclosure the Corporation and unit owner will have to address the restoration of the common element walls.

[60] The status certificate delivered on May 4, 2023, is dated October 25, 2021, and is still in the name of Karen King. Ms. King’s signature appears on the status certificate, although it appears in a different place on the 2023 status certificate than the original version of the status certificate.

[61] I pause here to note two things. First, the content of the 2023 status certificate might well justify the position taken by the board in its letter to the applicants dated April 27, 2023.

Second, the 2023 status certificate that purports to be the original status certificate dated October 25, 2021, has been altered, falsified, and is fraudulent.

[62] The applicants wrote to the corporation on May 6, 2023, asking for clarifications regarding the 2023 status certificate, and requesting a copy of the Gillespie Engineering report. The corporation did not respond. On May 23, 2023, the applicants followed up again asking for a response. They did not receive a response.

[63] On June 23, 2023, the applicants exchanged email messages with Colin Ogg, RCM, LCCI. His title is listed as Community Director at Maple Ridge Community Management. The applicants attached a copy of the actual status certificate they received back in October 2021. The applicants correctly pointed out that the original status certificate did not mention the solarium. Mr. Ogg did not address the obvious discrepancies, but responded as follows:

> Please send the actual e-mail where you received this including the attachments as the one I have sent you mentioned the solariums. The status you sent also says the owner is responsible to inform the purchaser have any additions or alterations and so your claim would be against the previous owner and not the corporation.

[64] On June 28, 2023, the applicants followed up again asking for an explanation of the discrepancies between the status certificates. On July 14, 2023, Mr. Ogg responded, but did not address the simple question asked by the applicants. Instead, he responded as follows:

> We have checked with legal counsel and have confirmed that the language at section 5 gives a clear (and, in fact, bold -typed) warning that the recipient ought to make their own inquiries and investigations into whether there may be unauthorized alterations. If the purchaser had made proper inquiries and investigations, and sought the advice of their realtor, lawyer or other expert, they would have discovered the risks associated with the balcony enclosure and related alterations, including the possibility of future removal.

[65] Still not having received an answer, the applicants followed up again on July 5, 2023, asking for an explanation about the discrepancies between the two status certificates. Mr. Ogg responded as follows:

> The language was from the status certificate that you sent to me as having received when you purchased. The difference between the status you advised you received and the status from the turnover documents I cannot comment on as it was from the previous management company. It is irrelevant to the response from the lawyer as they used the material you sent to me.

[66] The corporation provided a similar response on July 14, 2023. I pause here to note that it was Mr. Ogg's company, MRCM, that sent the second status certificate on May 5, 2023. He certainly could "comment on" why his company sent an altered and falsified version of the status certificate. In the following two months, he did not provide a credible or coherent explanation for why his company had provided the 2023 status certificate or how it came to be created.

[67] On September 8, 2023, the corporation announced that it had engaged contractors to demolish the solariums at an estimated cost of $19,600, plus HST. The corporation informed the applicants that the cost would be charged back against the unit. On September 21, 2023, the applicants retained counsel and the negotiations continued.

[68] On November 1, 2023, the board of directors announced the special assessment to fund the balcony repairs. The applicants' share of that expense was $21,905.80, which was due on December 1, 2023. The board also announced a second special assessment of equal size, which would be due in 2024. The board added this amount to the unit's ledger on December 22, 2023.

[69] On January 25, 2024, the corporation added $11,582.50 to the ledger for the cost of demolishing the solarium.

[70] On February 17, 2024, the corporation sent a notice of lien, which would be placed on the unit unless the applicants paid $22,989.02, which represented the charges discussed above, interest, and legal costs. The lien was registered on February 27, 2024, and the corporation threatened to sell the unit. By February 29, 2024, the unit's ledger stood at $33,488.30.

[71] The applicants clearly raised the altered and falsified 2023 status certificate in Ms. Gonzales' initial affidavit. The corporation filed three responding affidavits for use on the application. Each affidavit was sworn by Kavi Lochan, the president of the corporation's board of directors. Incredibly, the corporation did not address the provenance or use of the 2023 status certificate in the three affidavits. Not only did the corporation not provide a satisfactory explanation of what happened, the corporation did not even try to do so. This decision is almost as troubling as the falsified second status certificate.

[72] In the absence of any evidence to the contrary, I conclude that the condominium corporation and its agents at MRCM deliberately altered and falsified the 2023 version of the status certificate. The corporation is responsible for the acts of its agents. They knowingly caused additional text to be added to the authentic status certificate to support the hard-line position they were taking with the applicants. I conclude that if the applicants had not found a true copy of the original status certificate, the corporation and its agents would have continued to lie to the applicants and insist that the corporation's position had been disclosed on the status certificate prior to purchase.

[73] Moreover, once the applicants located a true copy of the status certificate, Mr. Ogg engaged in a months' long campaign of obfuscation and delay. He never attempted to explain how someone from his company sent the applicants a falsified status certificate. Indeed, his only

attempt to explain what happened was to blame the former company, which could not have been responsible. Perhaps there is an explanation for Mr. Ogg's troubling conduct, but no explanation was offered in the record filed with the court.

D. The corporation engaged in oppressive conduct

[74] The condominium corporation and its agents engaged in a shocking abuse of trust and power. The alteration and back-dating of a status certificate is among the most serious breaches that a corporation or its agents could commit. A unit owner is entitled to expect that the corporation and its agents will communicate truthfully and not alter documents to mislead owners regarding their rights and obligations.

[75] Oppressive conduct is burdensome, harsh, wrongful, and requires a finding of bad faith.[19] In my view, the corporation engaged in oppressive conduct. Knowingly falsifying a status certificate, attempting to rely on that falsified certificate to compel a unit owner to accept the cost of demolishing the solarium, and then continuing to lie and mislead the owner is a paradigmatic example of acting in bad faith. I declare that the corporation's conduct is oppressive, contrary to s. 135 of the *Act*.

E. Remedy

[76] The applicants are entitled to a remedy for the oppression that they have suffered. The court has wide discretion to award remedies for oppression under s. 135 of the *Condominium Act*.[20] 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 the applicants.[21] In my view, the applicants are entitled to the following relief.

[77] First, the applicants are to be exempted from any obligation to contribute to the cost of the demolition of their solarium. The corporation is to bear those costs without any contribution from the applicants. The $11,582.50 charge imposed by way of letter dated January 25, 2024, is to be reversed along with all interest and other charges related to that expense. The applicants' ledger is to be completely cleared of that charge. If there are any other charges related to the demolition of the solarium, the applicants are to be relieved of those charges and all accrued interest.

[78] Second, the corporation is to pay $75,000 in damages to the applicants. This award is to serve four purposes.

a. It is to denounce, in the strongest possible terms, the oppressive conduct of the corporation toward the applicants. The court will not tolerate the alteration and

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[19] *Brant*, at p. 305-306.
[20] *Sarah Computer Consulting Inc. v. Peel Condominium Corp. No. 421*, 2012 ONSC 3708, at para. 54.
[21] Audrey Loeb, *Condominium Law and Administration*, 2nd ed. (Thomson Reuters, 2024) at § 24:18.

falsification of a status certificate. The failure to offer a credible explanation for the conduct is even more troubling.

b. It is to deter this condominium corporation from ever repeating such misconduct. This award is to send a strong message to the corporation that it must always deal with its owners in good faith. Whatever failures led to this situation, be they at the board level or with its property management company or both, must be rectified so that this corporation never again circulates altered and falsified documents to gain an upper hand in discussions with unit owners. This type of misconduct can never be repeated.

c. It is to send a message of general deterrence to all other condominium corporations: the court will not tolerate oppressive and abusive conduct of this sort.

d. It is to recognize the stress the corporation caused the applicants by its oppressive conduct. I recognize that some of the applicants' stress was caused by the applicants' failure to pay the special assessment connected to the balcony work, for which they are responsible. However, the failure of the corporation to act in good faith towards the applicants made a trying and contentious situation much more challenging than it ever needed to be. It is difficult to know how the negotiations would have proceeded if the corporation had always acted in good faith. It seems likely to me that the situation could have been resolved amicably. This may, in turn, have allowed the applicants to avoid out of pocket expenses, including the need to renegotiate their mortgage.

[79] Third, I am vacating the lien currently registered on the applicants' unit. The corporation shall not place any further liens on the unit for a period of six months. During this six-month window, the parties shall negotiate over the applicants' payments of the special assessments for which they are responsible. The corporation shall make best efforts to allow the applicants to participate in the loan program for the special assessment, if the applicants are interested in that process.

[80] I am not prepared to order the corporation to reconstruct the solarium or to pay compensation for loss of the fair market value of the applicants' unit. I am not satisfied that the applicants proved an entitlement to those damages, since the original status certificate was accurate.

Costs

[81] I urge the parties to resolve the costs of this application.

[82] If they are not able to do so, the applicants may email their costs submission of no more than three double-spaced pages to my judicial assistant on or before November 25, 2024. The corporation may deliver its responding submission of no more than three double-spaced pages on or before December 2, 2024. No reply submissions are to be delivered without leave.

Robert Centa J.

Date: November 18, 2024