

SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT

BETWEEN:)	
)	
GREGORY JOHN BELL)	Unrepresented Party
)	
)	
)	
)	Plaintiff
)	
- and -)	
)	
)	
CARLETON CONDOMINIUM)	Ms. Nancy Houle
CORPORATION (CCC) # 70)	Counsel for the Defendant
)	
)	
)	Defendant
)	
)	
)	HEARD: December 16, 2004

TIERNEY J.

DECISION

[1] In the claim giving rise to these proceedings the Plaintiff sought relief from and at trial was granted an order against the Defendant corporation with respect to the cost involved in accessing the Defendant's corporate records. The decision included a monetary award, which sum has been paid.

[2] Following the decision the Board of Directors delivered a package of material, which the Plaintiff unit owner determined, upon review, to be deficient and non-compliant with the order.

The request to deliver additional documentation was refused; the Defendant submitted that the material previously delivered satisfied their obligation in full.

[3] In the present application the Plaintiff makes the following request:

1. The Defendant be ordered to comply with Justice Tierney's Order and supply the Plaintiff with unedited copies of the Corporation's related records.
2. The Defendant be ordered to supply the Plaintiff with copies of its complete records as the documents provided are incomplete.

The Plaintiff has reason to believe that certain of the Corporation's Officials, current and past members of the Corporation's Board of Directors, have not fulfilled their duties in a professional manner. As a result, the Plaintiff has reason to believe that greater accountability and controls are required with respect to the financial affairs of the Corporation. The related concerns relate to the expenditure of the Corporation's common funds and the issue of conflict of interest. The edited and incomplete nature of the records supplied reinforce the Plaintiff's concerns.

Notwithstanding the edited and limited information/records provided, sufficient details exist to make the following request:

3. Pursuant to subsection 130.(1) of the *Condominium Act* the Plaintiff requests that the Court appoint an inspector
 - i. To investigate the Corporation's records mentioned in subsection 55(1) of the *Act*, and
 - ii. To conduct an audit of the accounts and records mentioned in section 55 of the *Act* governing disclosure (or lack thereof) by the Corporation's directors and officers of any interest, and regarding any resulting attention (or lack of attention) by the Board of Directors, pursuant to sections 40 and 41 of the *Act* for the six (6) past fiscal years (1998-2003) and the current fiscal year (2004).

The purpose of the above appointment, with the resulting work of the appointed inspector, is to ensure due compliance by the Corporation with the *Condominium Act* and take appropriate remedial measures, as required.

4. Based on the information provided to date or following the appointed inspector's findings, the Court is requested to issue an "Oppression Remedy" pursuant to subsections 135(1) and (3) of the *Act*. It is requested the requested 'Order':

- prohibit similar conduct of the part of the Defendant by ordering due compliance with the 'conflict of interest' and 'records management' provisions of the *Act*.
- oblige the Defendant to pay the Plaintiff compensation in the amount of \$1,000.00, or a monetary amount the Court deems fair and appropriate, exclusive of costs of the present court action.

5. The Court is also requested to order the payment to the Plaintiff by the Defendant of allowable costs related to the present court action.

[4] The requests address two specific areas of concern. These include firstly, the alleged failure to deliver all relevant records and the editing of the records prior to their delivery, and secondly, due to the alleged failure to properly manage the business affairs of the corporation, the appointment by the court of an inspector to investigate the corporate records and make a written report pursuant to s. 130 of the *Condominium Act*, and, concurrently, relief based upon the oppression remedy provided by section 135.

[5] Dealing with the first area of concern, the documents that were delivered are edited versions of Minutes of Board meetings, work orders and invoices. In some instances the numbered pages are completely blank. This effectively renders the document incomprehensible as a reliable record of proceedings and activities of the Board of Directors. The result is that the Plaintiff is deprived of his right to examine the financial records of the corporation.

[6] The evidence established that in the editing process, the Board members eliminated those portions of records dealing with transactions they deemed irrelevant because they dealt with issues other than conflict of interest involving Board members on the one hand, and matters involving individual unit owners on the other. Matters involving individual unit owners are clearly protected by section 55(4)(c). However the Board was not entitled to deprive the Plaintiff of his right to view any of the documentation that is not specifically exempted from production by section 55(4) of the *Act*. The open door policy of the legislation requires access to all other financial records of the corporation.

[7] For the corporation it was submitted that the editing process was adopted because the Board believed that the Plaintiff was only interested in viewing documents dealing directly with conflict of interest, which Board members had, related to the expenditure of corporate funds. In

this regard the evidence satisfies me that in making the requests for disclosure the extent of information and documentation has continuously escalated. Whereas at the outset the issue was confined to conflict of interest the concern now advanced relates to the broad area of the adequacy of record keeping and the management of the corporation's business affairs generally and Board's competency in that regard.

[8] Having regard to the foregoing, the Plaintiff's right to examine the complete financial records except those exempted by s. 55(4) of the *Act* is affirmed. Lacking evidence as to the quantity and volume thereof, it is ordered that the parties shall agree on a convenient time and the corporation shall provide a convenient location for the examination, allowing copying at the Plaintiff's expense.

[9] The Defendant challenged the jurisdiction of the Small Claims Court with respect to the request for appointment of an inspector to investigate the corporate records and to conduct an audit of its financial affairs and also with respect to the request for relief based upon the oppression remedy provision of the *Act*. I am of the view that the challenge must prevail. Whereas the legislation by section 55(10) specifically cloaks the Small Claims Court with authority to order the production of corporate records and by section 55(9) with authority to make a monetary award for the refusal to produce, it requires that the request for relief provided by section 130 (the appointment of an inspector) and by section 135 (the oppression remedy) be made to the Superior Court of Justice. By implication, the application must be brought before a Justice of the Superior Court of Justice. Former members of the Civil Division of the Ontario Court of Justice and Deputy Judges of that Court are not Justices of the Superior Court of Justice.

[10] Moreover the relief inherent in the oppression remedy involves an order of prohibition with respect to those acts, which are impugned. That is an equitable remedy, which, by virtue of section 96(3) of the *Courts of Justice Act*, is reserved to the Superior Court of Justice.

[11] Finally the request for a monetary award involves relief, which is ancillary to the oppression remedy provisions of section 135 with respect to which this Court lacks jurisdiction.

[12] This is not a proper case for an award of costs, no costs are awarded.



JUSTICE, SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT

Released: January 13, 2005

Re-released: Jan. 18/05

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

GREGORY JOHN BELL

Plaintiff

- and -

CARLETON CONDINIUM CORPORATION
(CCC) #70

Defendant

DECISION

TIERNEY J.

Released: January 13, 2005

*Re-released: Jan 18/05
Bamber*