

Case Name:

**Rogers Cable Communications Inc. v. Carleton  
Condominium Corp. No. 53**

Between

Rogers Cable Communications Inc., plaintiff, and  
Carleton Condominium Corporation No. 53, defendant, and  
Bell ExpressVu Limited Partnership,  
third party defendant

[2005] O.J. No. 921  
Court File No. 05-CV-030376

**Ontario Superior Court of Justice  
A.J. Roy J.**

March 7, 2005.  
(12 paras.)

**Counsel:**

Timothy Pinos and Robyn Campbell, for the Plaintiff

James Davidson and Nancy Houle, for the Defendant Carleton Condominium  
Corporation No. 53

Hugh M. DesBrisay, for the Third Party Defendant, Bell ExpressVu Limited Partnership

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**ENDORSEMENT**

¶ 1 **A.J. ROY J.** (endorsement):— On consent I made an order that Bell ExpressVu Limited Partnership ("ExpressVu") be made a Defendant in this action.

¶ 2 The Plaintiff is seeking an interlocutory injunction restraining the Defendant, Carleton Condominium Corporation No. 53 ("CCC No. 53") from entering into and implementing or continuing a Bulk Service Agreement with the Defendant ExpressVu.

¶ 3 The basis of the Application by Rogers Cable Communications Inc. ("Rogers") is that they entered into a binding agreement with the Defendant CCC No. 53 in February of 2004, which agreement prohibited the condominium corporation from entering into any Bulk Service Agreement with any cable service provider.

¶ 4 In accordance with the decision in *RJR-MacDonald Inc. v. Canada* (Attorney General), [1994] 1 S.C.R. 311 (S.C.C.), there is a three-part test for granting an interlocutory injunction; (1) is there a serious question to be tried?; (2) will the Applicant suffer irreparable harm if the injunction is not granted?; and (3) which party will suffer the greater harm from granting or refusing the remedy pending the decision on its merits?

¶ 5 It is obvious that the Plaintiff cannot succeed in obtaining an interlocutory injunction unless there is a valid binding agreement between the Plaintiff and the Defendant CCC No. 53, which prohibits the condominium corporation from entering into a Bulk Service Agreement with the Defendant ExpressVu. In this matter, a single member of the Board of Directors signed the document without knowledge or the authority of the Board of Directors.

¶ 6 In ordinary circumstances, agreements signed by a member of a Board of Directors may well be binding on a corporation and the Plaintiff could invoke what is referred to as the "indoor management rule" and by relying on the Board's apparent authority. This rule has no application to condominium corporations. (See *Winfair Holdings (Lagoon City) v. Simcoe Condominium Corp. No. 46*, [1998] O.J. No. 5022 (O.C.A.) and *Re Carleton Condominium Corp. No. 279* and *Rochon et al.* (1987), 59 O.R. (2d) 545 (O.C.A.)).

¶ 7 It is quite clear that the purpose of the Condominium Act, R.S.O. 1980, c. 84, was to protect the condominium owners. This legislation has been categorized by the courts as "Consumer Protection Legislation." (See *Ormond v. Richmond Square Development Corp.*, [2003] O.J. No. 668 (Ont. Sup. Ct.) at para. 50). Therefore, the provisions of the Condominium Act pertaining to the execution of agreements has to be adhered to. A single member of the Board of Directors cannot bind the condominium corporation. In accordance with the Act, all decisions of the Board of Directors must be taken at a meeting of the Board of Directors where a quorum has been established. Further, contracts cannot be executed without authorization by resolution of the Board. (See s. 32 of the Condominium Act).

¶ 8 The evidence before me would indicate that the agreement between CCC No. 53 and the Plaintiff was signed by a single member of the Board of Directors thinking that this agreement was simply a continuation of an earlier agreement when in fact he was granting an agreement in perpetuity to the Plaintiff that the Defendant CCC No. 53 would not enter into any Bulk Service Agreement with any cable service provider.

¶ 9 Given the nature and possible consequences of this agreement on the parties, I would have thought that Rogers would have made sure their contract received the approval of the Board of Directors if they wanted a binding agreement. That is why the Legislature enacted the Condominium Act. If all condominium owners are to be bound by an agreement it must comply with the Act.

¶ 10 I have serious doubts that the member of the Board knew or appreciated what he was signing. I have no doubt that the execution of this agreement is not in conformity with the provisions of the Condominium Act and therefore is not binding on CCC No. 53.

¶ 11 Therefore, the first test provided for in RJR-MacDonald Inc., supra, that is, "is there a serious question to be tried?" has not been met and accordingly the Plaintiff's Application for an interlocutory injunction is dismissed.

¶ 12 Costs of this Application will be left to the judge who will deal with the Plaintiff's claim.

A.J. ROY J.

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