

Case Name:

**Skyline Executive Properties Inc. v. Metropolitan
Toronto Condominium Corp. No. 1385**

Between

Skyline Executive Properties Inc., Front Street Properties Inc., Jacob Aboudi, Ezra Aharon, Ampayer Properties Inc., Daniel Avidor, Oren Balaban, Moshe Becher, Mordechai Ben-Ami, Sholmit Ben Shahar, David Ben Shahar, Michael Burdin, Boris Burdin, Malka Chesner, Yecheskel Chesner, Avraham Cohen, Aviram Cohen, Mordechai Cohen, Miriam Cohen, Tsion Elyasaf, Cohava Elyasaf, Varda Feldman, Mordechai Givon, Yoav Hammer, Chanita Jackson, Joseph Jackson, David Karny, Roni Karny, Marco Libsker, Yana Manelis, Ya'Acov Manelis, Dalhia Martin, Moshe Molcho, Atalia Molcho, Yaffe Monefa, Levia Moore, Mordechai Moore, Dalia Munz, David Munz, Miriam Perl, Asher Perl, Noa Renert, Adam Renert, Dina Rolel, Igor Dyakov, Menashe Rosenfeld, Amit Rotem, Henryk Rottenberg, Drora Rottenberg, Yehudith Shapir, Ilana Shnabel, Jacob Tajtelbaum, Naomi Tajtelbaum, Michaeli Uri, Yehezkei Yehuda, Dina Yehuda, Amos Wolfson, and Oded Zucker, applicants/appellants, and Metropolitan Toronto Condominium Corporation No. 1385, Ian Waldron, Ayesha Kahn, Michael Waring and Patrick Lall, respondents/respondents

And between

Metropolitan Toronto Condominium Corporation No. 1385, Farhar Ameeriar, Tom Baker, Peter Benum, Ramona Berndt, Pearl Botbol, Joan Bowser, John Bowser, Alice E. Briesmaster, Eva Bryan, Joseph Cabell, Rose Calla, Maria-Carla Carrara, Kim T.R. Carter, David Chin, Nicholas Choo-Son, Penelope Cookson, Renata D'Aliesio, Clem D'Souza, Teresa D'Souza, Juven Duarte, Walter Etna, Tonci Farac, Jane Farnan, Jamie Feehely, Roy Forrester, Marla Friedman, Joan Friel, Ivy Fung, Jeremy Gayton, Stephen S. Grasset, Annette Gratton-Firestone, Michael Groden, Robin Guinness, Sandra Guinness, Carrie Hackett, Ian R. Hackett, Daniel Hanequand, David W. Hansen, Kate Hellin, Ronald S. Hikel, Holger Huls, Ilka Huls, Judy Imm, Janet Jack, Richard James, Janet Kent, John Kent, Tushar Kittur, Patrick S. Lall, Roxanne Lall, John Lawson, Delfin Lazaro, Pilar Lazaro, Helen Larsson, Jacques Le Blanc, Jacob Levman, Tom Longhurst, Patricia Macdonald, Nora Madlangbayan, Gina Mani, Sean Mani, Zeljko Marcan, Helen Matsos, Alexander McIntosh, Kelly Mcisaac, Colleen Mcleod, Ellen Joanne Millard, Suzanna Ng, Patricia O'Malley, Janice Paul, Lorraine Pauls, Molly Peacock, Terry Pennock, Leksandar Popovic, Timothy Redmann,

Astra Renwick, Rachel B. Romero, Kate Rossi, Lawrence Rossi, Karen Roycroft, Wilma Sarmiento, Amy Sedgwick, Sanjiv Shah, Marina Silov-Marcan, Thanyaporn Sombati, John H. Skye, Rita Skye, Thanyaporn Sombati, Norbert L. Stepien, Alenka Stiglic-Farac, Helen Tavares, Julio Tavares, Greg Thiel, Stephen Tinling, Carlo Tosti, Maria Tosti, Clarita B. Umali, Lavinia Vasilache, Ian Waldron, Michael Waring, Nancy Waring, Charles Wasilewski, Margaret Mary Asilewski, Nancy Watkins, Charlyn Wee, Dan Wilson, Louise Wilson, Anna Caccamo Davies, Tom Davies, Elizabeth M. De Lory, James W. De Lory, Ann Foster, Kathy Garvin, Jane Glatt, Helen Keenan, Donna Lewis, Elaine Martinovic, Douglas McIntosh, Denis Michaud, Gene Schmidt, Karen Sparks, Leendert Stolk, Christine Van Duermen, Robert Vienneau, and Alice Wong, applicants by counter-application/respondents, and Skyline Executive Properties Inc., Front Street Properties Inc., Jacob Aboudi, Ezra Aharon, Ampayer Properties Inc., Daniel Avidor, Oren Balaban, Moshe Becher, Mordechai Ben-Ami, Sholmit Ben Shahar, David Ben Shahar, Michael Burdin, Boris Burdin, Malka Chesner, Yechezkel Chesner, Avraham Cohen, Aviram Cohen, Mordechai Cohen, Miriam Cohen, Tsion Elyasaf, Cohava Elyasaf, Varda Feldman, Mordechai Givon, Yoav Hammer, Chanita Jackson, Joseph Jackson, David Karny, Roni Karny, Marco Libsker, Yana Manelis, Ya'Acov Manelis, Dalhia Martin, Moshe Molcho, Atalia Molcho, Yaffe Monefa, Levia Moore, Mordechai Moore, Dalia Munz, David Munz, Miriam Perl, Asher Perl, Noa Renert, Adam Renert, Dina Rolel, Igor Dyakov, Menashe Rosenfeld, Amit Rotem, Henryk Rottenberg, Drora Rottenberg, Yehudith Shapir, Ilana Shnabel, Jacob Tajtelbaum, Naomi Tajtelbaum, Michaeli Uri, Yehezkei Yehuda, Dina Yehuda, Amos Wolfson, and Oded Zucker, respondents by counter-application/appellants

[2003] O.J. No. 5116

Docket No. C39432

**Ontario Court of Appeal
Toronto, Ontario
Catzman, Laskin and Simmons J.J.A.**

Heard: December 12, 2003.

Judgment: December 12, 2003. Released: December 15, 2003.

(5 paras.)

On appeal from the judgment of Justice Keith A. Hoilett of the Superior Court of Justice dated December 20, 2002.

Counsel:

Michael A. Spears, for the appellants.

Mark H. Arnold, for the respondents Metropolitan Toronto Condominium Corporation No. 1385 et al.

Patricia M. Conway, for the intervener Metropolitan Toronto Condominium Corporation No. 1280.

The following judgment was delivered by

THE COURT (endorsement):—

Appointment of the Administrator

¶ 1 In appointing an administrator, Hoilett J. found as facts that there existed a state of disequilibrium in the Condominium Corporation, precipitated by the tension between two groups with divergent interests, and that there was good reason to view the appellant's long-term intent with suspicion notwithstanding its then current compliance with the 6-month rule. There was evidence from which Hoilett J. could make these findings, including the affidavit of Gil Blutrigh, the president of the appellant, that Skyline could not survive under the 6-month rule and the evidence that the appellant acquired ten additional units, a fact suggestive of its intent to take control of the board and change that rule. Hoilett J. committed no palpable and overriding error in making those findings, and there is no basis on which this court could overturn them.

¶ 2 Hoilett J. was properly concerned that a change to the 6-month rule would conflict with the terms of the condominium declaration. We note that, in paragraph 2 of his order, he declared that transient use of the units would amount to a conflict with the condominium declaration. The appellants have not pursued the appeal from that conclusion.

¶ 3 We dismiss the appeal from the appointment of the administrator.

Costs

¶ 4 Hoilett J. ordered the appellant to pay costs on a substantial indemnity basis, fixed by him at \$58,000. In our view, there were no findings that would bring this case within the principles enunciated in *Mortimer v. Cameron* (1994), 68 O.A.C. 332. Accordingly, we grant leave to appeal the question of costs, allow the appeal on that question and substitute an order that the costs ordered by Hoilett J. be on a partial indemnity basis, in an amount to be assessed.

Costs of the appeal

¶ 5 Having regard to the fact that the respondent has had substantial, though not complete, success in this court, we award it costs in the sum of \$10,000, inclusive of disbursements and G.S.T. The intervener seeks no costs, and we award none.

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Court: 2003 Ontario Court of Appeal

Reported at:
[2003] O.J. No. 5116

History of Case
Same Case
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[2002] O.J. No. 5117