IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION (GENERAL)

Citation: *Summer Services Limited v. Karwood Commercial Condominium Corporation*, 2016 NLTD(G) 94
Date: June 8, 2016
Docket: 201601G1728

BETWEEN:

SUMMER SERVICES LIMITED

APPLICANT

AND:

KARWOOD COMMERCIAL CONDOMINIUM CORPORATION

RESPONDENT

Before: Justice Robert P. Stack

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: May 13, 2016

Summary:

A condominium corporation's board of directors may impose a condition upon its consent to the installation of air conditioning in a unit based upon its determination that the unit owner has contravened the condominium declaration by competing with the core business of another unit holder. But the board of directors must act honestly and in good faith in imposing such a condition. Here, the board failed to do so. The unit holder is entitled, therefore, to a declaration that it be given approval for the installation of the air conditioning in the unit.

Appearances:

John J. Hogan	Appearing on behalf of the Applicant
Sheri H. Wicks	Appearing on behalf of the Respondent

Authorities Cited:

CASES CONSIDERED: Lexington on the Green Inc. v. Toronto Standard Condominium Corp. No. 1930, 2010 ONCA 751; **Metropolitan Toronto Condominium Corp. No. 699 v. 1177 Yonge Street Inc.**, (1998) 39 O.R. (3d) 473, 109 O.A.C. 192; **Pearson (Litigation Guardian of) v. Carleton Condominium Corp. No. 178**, 2012 ONSC 3300; **Tofin v. Spadina Condominium Corp.**, 2011 SKQB 219; **Maverick Equities Inc. v. Condominium Plan No. 942 2336**, 2010 ABQB 179; **934859 Alberta Inc. v. Condominium Corp. No. 0312180**, 2007 ABQB 640; **Anderson v. Owners: Condominium Plan No. 99SA34021**, 2010 SKQB 53; **Maverick Equities Inc. v. Condominium Plan No. 942 2336**, 2008 ABCA 221; **London Condominium Corp. No. 13 v. Awaraji**, 2007 ONCA 154

STATUTES CONSIDERED: *Condominium Act, 2009*, S.N.L. 2009, c. C-29.1

TEXTS CONSIDERED: Marko Djurdjevac & Guy Régimbald, *Halsbury's Laws of Canada*: *Condominiums – Constitutional Law - Division of Power* (LexisNexis, 2015) "The Board of Directors: Standard of Care" (IV.4)

REASONS FOR JUDGMENT

STACK, J.:

INTRODUCTION

[1] The Applicant, Summer Services Limited, owns Unit #8 (the "Unit") of the Respondent, Karwood Commercial Condominium Corporation, from which it operates massage therapy and pre-natal ultrasound businesses. In August of 2015, the Applicant applied to the Respondent for approval to install air conditioning in the Unit. The Respondent has determined that the Applicant is in violation of the condominium declaration of the Respondent (the "Declaration") by carrying on a massage business in the Unit conflicting with the core business of another unit owner. Consequently, the Board has approved the installation of air conditioning provided that the Applicant ceases operation of the massage therapy business from the Unit.

[2] I find that the Respondent may attach a condition to its consent to the Applicant's application for air conditioning in the Unit because of the Respondent's determination that the Applicant has contravened the Declaration by competing with the massage therapy business of another unit holder. I find further, however, that the Respondent must act honestly and in good faith in imposing such a condition. Here, the Respondent's disingenuous treatment of the Applicant did not meet the standard of honesty and good faith required of it. The Applicant is entitled, therefore, to a declaration that it be given approval for the installation of the air conditioning in the Unit as per its application.

FACTS

[3] 67710 Newfoundland and Labrador Ltd. (the "Declarant") was the developer of a 13 unit commercial condominium building located at 69 Karwood Drive, Paradise, Newfoundland and Labrador, known as Karwood (the "Condominiums"). On August 23, 2013, the Declarant registered the Condominiums as a commercial

condominium corporation at the Registry of Condominiums as registration number 134.

[4] On September 24, 2013, Unit #5 of the Condominium was conveyed to Maschinbau Technologies Ltd. from which it operates a chiropractic and massage therapy business called Spinal Solutions.

[5] In December of 2013, the Applicant entered into an agreement to purchase the Unit from the Declarant. On December 12, 2013, Justin Spurrell ("Spurrell"), a member of the board of directors of the Declarant, wrote to Sarah Bennett ("Bennett"), the principal of the Applicant, by email as follows:

> Hi Sarah, Just wondering if you can send me a quick overview of the business that you will be operating from the [Unit] just so I can let the Chiropractor know and I will then do up an agreement of sorts whereby both parties acknowledge and agree to a massage therapist practicing in your respective units.

[6] Four minutes later, Bennett replied:

> Hi Justin, The name of our massage therapy clinic is A New Beginning Massage Therapy. We will have 3 massage therapy rooms in our location. We plan on having at least 3 massage therapists on staff and hope to have more than that in the coming years. We currently operate Tuesdays through Saturdays. Any other specific information you need? All massage therapists are professionally registered.

[7] It is assumed that the "Chiropractor" referred to in Spurrell's email is Spinal Solutions (Maschinbau Technologies Ltd.). There was no evidence that any agreement such as that completed by the email was executed.

[8] On June 4, 2014, the Applicant purchased the Unit.

[9] On September 3, 2014, Terry Hussey ("Hussey"), a member of the Board of Directors of the Respondent (the "Board"), wrote to the Respondent with the Board's approval for the Respondent's proposed signage for the Unit. The attached design proof shows proposed signage for both windows of the Unit and a large free-standing sign facing sideways to a road. The signs advertised two businesses: "UC Baby" and "A New Beginning Massage Therapy". The evidence does not establish whether the signs were actually installed as contemplated.

[10] As mentioned, the Unit is used by the Respondent to operate "A New Beginning", which provides massage therapy, and "UC Baby", which provides pre-natal ultrasounds for expectant mothers.

[11] In August of 2015, pursuant to Article 4.05(d) of the Declaration, the Applicant provided the Respondent with plans and specifications for the installation of air conditioning in the Unit and sought the consent of the Board. The Applicant wished to install air conditioning in the Unit because the UC Baby ultrasound equipment generates heat which makes the room unpleasant for pregnant women.

[12] By an affidavit filed on April 22, 2016, Hussey swore that during the summer of 2015, as the result of a complaint from Spinal Solutions, the Board was made aware that the Respondent was conducting a massage therapy clinic from the Unit. He further swore that the Board investigated and satisfied itself that the Applicant was operating a massage therapy business from the Unit and as a result was in direct competition with the core business of Spinal Solutions.

[13] On September 9, 2015, Hussey, on behalf of the Board, emailed the Applicant to advise that its operation of a massage therapy clinic was in violation of the Declaration and required the Applicant to cease operation of its massage therapy business from the Unit. The September 9 email made no mention of the application for the installation of air conditioning.

[14] On January 28, 2016, by an email from Hussey, the Applicant was advised that the Board was unable to approve the Applicant's request for the installation of air conditioning in the Unit because it was not approving any modifications to the exterior of the building at that time. No mention was made of the massage therapy issue.

[15] On March 15, 2016, the Applicant filed this Originating Application requesting, among other things, a declaration that the Respondent has failed to comply with the *Condominium Act, 2009*, S.N.L. 2009, c. C-29.1 (the "*Act*") and Article 4.05(d) of the Declaration.

[16] On April 20, 2016, the Board wrote the Applicant and advised that it would approve the installation of air conditioning in the Unit conditional upon the Applicant first becoming compliant with the non-competition provision of the Declaration, i.e. by the Applicant ceasing operation of its massage therapy clinic.

[17] The Respondent has offered no basis for objection to the installation of air conditioning in the Unit other than its determination that the Applicant is in violation of the non-competition provision if the Declaration.

THE ACT AND DECLARATION

[18] Ownership of the units in the Condominium is subject to the *Act* as well as the Declaration and By-Laws (if any) of the Respondent.

The *Act*

[19] Section 19(1)(c) of the *Act* provides:

> 19. (1) The corporation has the duty to…
>
> > (c) take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of common elements and the agents and employees of the corporation comply with this Act, the regulations, the declaration, the bylaws and the rules.

[20] Among the matters that a declaration must address are those provided for in sections 9(1)(c), sections 9(1)(f) and (i) as follow:

> 9. (1) A declaration shall be executed by the declarant and shall contain…
>
> > (f) provisions relating to limitations on use or special restrictions or obligations to be imposed on the owner of a unit or with respect to the unit or common elements…
> >
> > (i) provisions respecting the occupation and use of the units and common elements….

[21] The board of directors of a condominium corporation is required by section 32(1) of the *Act* to act honestly and in good faith. This duty applies to the application by a board of the *Act* and the Declaration and By-Laws of the condominium corporation.

[22] By section 64(1) of the *Act*, where a dispute arises between an owner and the corporation, if the parties consent the matter may be submitted to mediation. By section 64(6), however, nothing in the *Act* restricts the legal remedies otherwise available for failure to perform any duty under the *Act*.

The Declaration

[23] A declaration is a foundational document of a condominium corporation, analogous to a constitution, which imposes statutory duties on the entity in question (See: **Lexington on the Green Inc. v. Toronto Standard Condominium Corp. No. 1930**, 2010 ONCA 751).

[24] Article 3.02 of the Declaration states:

> 3.02 Duties and Powers
>
> The Corporation has the duty to…
>
> (c) take all reasonable steps to ensure that the Owners, the occupiers of the Units, the lessees of the Common Elements and the agents and employees of the Corporation comply with the Act, the Regulations, the Declaration, the Bylaws and the Rules; and
>
> (d) perform any other duties which it is required to perform by the Act….

[25] Article 3.07 of the Declaration provides that, subject to the *Act*, the affairs of the Corporation shall be administered and managed by the Board. This means, for example, that it is the Board that has the duty to ensure compliance with section 19(1)(c) of the *Act* and Article 3.02(c) of the Declaration.

[26] By Article 4.05(a) of the Declaration, each condominium unit must be occupied for a commercial or business purpose and its occupation and use are subject to the conditions and restrictions set forth in Article 4.08.

[27] Consent in writing from the Board is required before a unit holder may make alterations or repairs to a unit. Article 4.05(d) of the Declaration provides:

4.05 Occupation and Use

…

(d) the Owner of each Unit shall first obtain the consent in writing of the Board before making any alterations, repairs to his Unit or any service upgrades to his Unit for air, water or electricity, and the Owner shall submit to the Board proper plans and specifications outlining the proposed alterations, upgrades and repairs prior to the Board's granting of consent. The consent shall only be granted by the Board if the alterations, upgrades or repairs are being made in accordance with all relevant municipal and other governmental By-laws, regulations or ordinances and the conditions, if any, imposed by the Board. The Board shall otherwise approve the plans and give its consent unless, in the opinion of the Board, whose opinion shall be final, the proposed alterations, upgrades or repairs, or the manner of carrying them out are likely to impair the value of any other Unit or the Common Elements or are likely to exceed the acceptable utility or consumption tolerances of the Building….

[28] Pursuant to Article 4.08, the use and sale of units are subject to certain non-competition provisions. By Article 4.08(a), prior to the sale of a unit by the Declarant to an intended purchaser, the intended purchaser must submit a "specific business plan" setting out the core nature of the proposed business in sufficient detail to allow the Declarant to approve or disapprove of the proposed sale. The proposed sale shall be approved unless the Declarant determines that the core nature of the proposed business would, among other things not relevant here, "be in competition the core business of any other business or proposed business" of any other existing unit owner.

[29] Article 4.08(f) of the Declaration gives the Board exclusive authority to determine if the business operation of a unit holder is in competition with the core business of another unit holder. Article 4.08(f) states as follows:

If the Board, in its absolute discretion and whose decision shall be final, shall determine that the business of a Unit Owner … would be in competition with the core nature of the business or proposed business of any other existing Unit Owner, the offending Unit Owner shall be deemed to be in violation of the Corporation's Declaration and By-Laws and shall immediately cease to operate such business or aspects of such business as the case may be.

ISSUES

[30] The parties have agreed that the issues before me are limited to:

1) Has the Respondent complied with the requirements of Article 4.05(d) of the Declaration?

2) If the Respondent has complied with the requirements of Article 4.05(d), was it entitled to impose, as a condition of its approval, a requirement that the Applicant become compliant with Article 4.08 of the Declaration?

[31] The Respondent had sought to have this matter converted from an Originating Application to a Statement of Claim. On May 5, 2016, Thompson, J. of this Court refused the application and determined that the issues appropriate for determination on the Originating Application were those listed above as well as whether the alleged non-compliance by the Applicant with the Declaration is supported by the evidence. At the hearing before me, the parties agreed that the evidentiary issues surrounding the third issue were complex with the result that the issue of whether the operation by the Applicant of a massage therapy business from the Unit is contrary to Article 4.08 of the Declaration is not before me.

THE LAW

[32] Cases have considered how condominium declarations should be interpreted. First, the declaration "must be interpreted by giving the words used their plain and ordinary meaning, and not an expanded meaning, and as a reasonably informed unit holder would read it" (**Pearson (Litigation Guardian of) v. Carleton Condominium Corp. No. 178**, 2012 ONSC 3300 at para. 23, relying on **Metropolitan Toronto Condominium Corp. No. 699 v. 1177 Yonge Street Inc.**, (1998) 39 O.R. (3d) 473 at para. 6, 109 O.A.C. 192). Second, they should not be construed using the principles of contract interpretation (**Tofin v. Spadina Condominium Corp.**, 2011 SKQB 219 at para. 40).

[33] Significant deference to the decisions of condominium boards is granted by courts given their status as duly elected bodies, leading to the recognition of a wide scope of discretion in granting or withholding consent to a unit holder. See, for example, **Maverick Equities Inc. v. Condominium Plan No. 942 2336**, 2010 ABQB 179 at paras. 44-46, where Veit, J. cited with approval the ruling in **934859 Alberta Inc. v. Condominium Corp. No. 0312180**, 2007 ABQB 640 at para. 54 that:

> 54. ...a Court should not lightly interfere in the decision of the democratically elected board of directors, acting within its jurisdiction and substitute its opinion about propriety of the board of directors decision unless the board's decision is clearly oppressive, unreasonable and contrary to legislation.

[34] The business judgment rule similarly suggests a deferential approach where boards carry out, in good faith, the specific duties for which they have been elected (Marko Djurdjevac & Guy Régimbald, *Halsbury's Laws of Canada*: *Condominiums – Constitutional Law - Division of Power* (LexisNexis, 2015) "The Board of Directors: Standard of Care" (IV.4) at HCD-43).

[35] Courts are therefore reluctant to interfere with a decision of the board of directors of a condominium corporation unless it is "clearly oppressive, unreasonable and contrary to legislation" or there is evidence of improper conduct (**934859 Alberta** at paras. 54-55, and **Anderson v Owners: Condominium Plan No. 99SA34021**, 2010 SKQB 53, at para. 33).

[36] In **Maverick Equities Inc. v. Condominium Plan No. 942 2336**, 2008 ABCA 221 at para. 13, the Alberta Court of Appeal considered alterations to a condominium unit requiring consent of the board of directors. The Court held that a board is "entitled to some considerable scope as to how it will exercise his [*sic*] discretion in granting or withholding consent..." although the conditions for granting consent must nevertheless withstand a reasonableness inspection.

[37] While consent cannot be unreasonably withheld, Canadian jurisprudence has recognized that condominium boards wield wide discretionary powers to grant or withhold consent. In **London Condominium Corp. No. 13 v. Awaraji**, 2007 ONCA 154 at para. 6, the Ontario Court of Appeal confirmed that courts should defer to reasonable board decisions:

> 6. ...[W]e consider that it is for the Condominium Corporation to interpret its Declaration and Bylaws and that so long as its interpretation is not unreasonable, the court should not interfere.

THE POSITIONS OF THE PARTIES

The Applicant

[38] The Applicant submits that the Respondent has unreasonably delayed responding to the application for the installation of the air conditioner. The initial response was not provided until January 28, 2016.

[39] Second, the Applicant submits that the Respondent acted unreasonably by initially withholding consent for the stated reason that it "was not approving any modifications to the exterior of the building at present". The real reason, communicated after the Applicant filed its Originating Application, is that the Respondent wants the Applicant to comply with its demand to desist from operating a massage therapy business from the Unit. According to the Applicant, this demonstrates bad faith.

[40] Third, the Applicant submits that the Respondent is acting unreasonably by "holding it hostage" over the allegation that it is operating a massage therapy clinic. Although the Respondent has other mechanisms available to it to enforce the By-Laws, says the Applicant, it instead chose to impose a condition upon the Applicant that is unrelated to the purpose of Article 4.05(d).

The Respondent

[41] The Respondent first submits that by advising the Applicant in April of 2016 of its conditional approval for installation of air conditioning in the Unit, it has complied with the requirements of Article 4.05(d) of the Declaration. Article 4.05(d) entitled the Respondent to provide consent to the proposed alterations to the Unit with conditions. The Respondent submits that it provided conditional approval on April 20, 2016 in compliance with the requirements of Article 4.05(d).

[42] To this end, the Respondent submits that the cease and desist notice of September 9, 2015, amounted to notification to the Applicant that compliance with the Declaration was a condition precedent to approval of the installation of air conditioning.

[43] Second, submits the Respondent, the Board acted reasonably in withholding consent regarding the alterations to the Unit given its honestly held belief that it could not grant consent to a non-compliant unit holder.

[44] The Respondent argues that the ordinary and plain meaning language of Article 4.05(d) gives the Board the right to withhold consent for alterations to a unit unless the "conditions, if any, imposed by the Board" are met. This broad language grants the Board the power to establish and enforce the conditions it deems necessary in the circumstances. The term "condition" is unconstrained by further qualifications. It was therefore reasonable, says the Applicant, for the Board to conclude that it could exercise a wide discretion in deciding what conditions it might impose on a unit holder. Having been told by the Board that it must desist from operating a massage therapy business from the Unit, the Applicant could not reasonably anticipate that it would be able to benefit from an advantage conferred by the terms of the Declaration when it continued to violate its obligations to the condominium corporation.

[45] In this regard, the Respondent relies on the deference afforded by the courts to bodies such as the Board as discussed above. Permitting a non-compliant unit owner to acquire a benefit from the pursuant to the Declaration in these circumstances would undermine the rights and obligations of the other unit owners and conflict with the Board's duty to ensure collective compliance with the obligations in its constating documents.

[46] Furthermore, says the Respondent, the prejudicial effects of the Applicant's non-compliance with its obligations pursuant to the Declaration far exceeds any disadvantage suffered by the Applicant resulting from the conditional consent to the installation of the air conditioning unit.

[47] To conclude otherwise, submits the Respondent, could lead to a chilling effect on such boards. Failing to afford adequate deference to the decisions of a condominium corporation risks deterring owners from volunteering to participate in the governance of a condominium corporation which is essential to its continued operation, particularly circumstances like these where there are only 13 units and 10 unit owners.

[48] Consequently, says the Respondent, it was reasonable to deny approval to install the air conditioning unit until the Applicant complied with the terms of the Declaration. By virtue of the *Act* and the constituting documents of the Respondent, the Board has the right to exercise broad discretion to circumscribe and impose conditions on unit holders prior to written approval of alterations and upgrades. A decision to withhold consent should not be found to be unreasonable where a condominium board attempts in good faith to satisfy its obligations respecting enforcement in the collective best interest of all condominium owners.

[49] The Respondent submits the Board acted in a manner that prioritized its statutory obligation pursuant to section 19(1)(c) of the *Act* to ensure compliance with the terms of the Declaration, over its obligation to approve alterations to units in Article 4.05(d) of the Declaration. The *Act* requires the Board to take all reasonable steps to ensure that the units are occupied in compliance with the *Act*,

the Declaration, and the By-Laws. This duty is reiterated by Article 3.02(c) of the Declaration.

[50] In fulfillment of its legal duty to ensure compliance with the Declaration and By-Laws, the Respondent submits that the Board acted reasonably in the circumstances by first sending a cease and desist notice relating to the massage therapy business and, secondly, by withholding consent to the installation of air conditioning until such time as the Applicant complied with Article 4.08 of the Declaration.

ANALYSIS AND DECISION

[51] Boiled down to its essence, the position of each of the parties is as follows:

1) The Applicant says that the allegation of contravention of the non-competition provisions of Article 4.08(c) of the Declaration is distinct from, and should not be considered in conjunction with, its application pursuant to Article 4.05(d) for consent to the installation of air conditioning in the Unit.

2) The Respondent says that it has an overarching obligation pursuant to section 19(1)(c) of the *Act* to take all reasonable steps to ensure that the owners of units comply with the Declaration; this means that the Board acted reasonably when it made its consent to the installation of the air conditioning conditional on the Applicant bringing itself into compliance with Article 4.08(c) of the Declaration.

[52] The role of the Court is not to determine how it would choose to interpret the Article in question but merely to determine whether the impugned interpretation by the Board is reasonable. In this case, I am satisfied that both interpretations of the Article are reasonable.

[53] As to the position of the Applicant, it would be reasonable to read Article 4.05(d) narrowly so that any condition imposed by the Board for an alteration to a unit would have to be confined to matters pertaining to the nature of the alteration proposed. Such an interpretation would give the words used their plain and ordinary meaning, and not an expanded meaning, as a reasonably informed unit holder would read them.

[54] But so, too, is the interpretation of Article 4.05(d) by the Respondent reasonable. The Declaration operates as a constitution for the unit holders in the condominium. One may rely on the advantages conferred by the Declaration – here the right to have a planned alteration to a unit consented to by the Board, which consent may not be unreasonably withheld. But so, too, may the Board impose a condition on the approval that the unit holder otherwise bring itself into compliance with the Declaration.

[55] The Board was entitled to consider the Applicant's request for the air conditioning in the context of the obligations imposed upon it by the Act and the duties and obligations imposed upon the Applicant by the Declaration. To the extent that the Applicant was not compliant in a material manner with the Declaration, it was reasonable for the Board to make compliance a condition precedent to proceeding with the installation of the air conditioning in the Unit. That is not to say that a refusal to grant permission to repairs or alterations to a unit would be reasonable based upon any violation of the Declaration, no matter its significance. Subject to the deference afforded to decisions of the Board as discussed above, each such decision would have to be evaluated based upon its particular circumstances. One would expect, though, that proportionality would factor into the analysis.

[56] But that does not end the matter. The imposed conditions for granting consent must nevertheless withstand a reasonableness inspection. The Board must act honestly and in good faith.

[57] Here the Declarant was notified by the Applicant in December of 2013 that it intended to conduct a massage therapy business from the Unit. Moreover, in September of 2014, Hussey advised the Applicant of the Board's approval of its proposed signage. That signage confirmed the Applicant's intention to conduct a massage therapy business from the Unit.

[58] I recognize that the issue of whether the Applicant is on contravention of Article 4.08 of the Declaration is not before me, but the limited facts of which I was made aware put the dispute into context.

[59] The statement sworn to by Hussey that as the result of a complaint from Spinal Solutions, during the summer of 2015 the Board was made aware that the Respondent was conducting a massage therapy clinic from the Unit, does not appear to be true. This is based upon the fact that the Declarant knew in December of 2013 that the Applicant intended to conduct a massage therapy business from the Unit. Furthermore, it appears to be disingenuous for the Board to suggest that when it approved the Applicant's signage, it was not made aware of the intention to conduct businesses from the Unit as described in the proposed signs. A more correct statement by Hussey may have been that the Respondent had no complaint about the Applicant's massage business until the summer of 2015. But where does that leave us?

[60] I have no direct evidence that the Board honestly held a belief that it could not grant consent to a non-compliant unit holder. Nor can I infer such an honestly held belief from the totality of the evidence. Given the requirement that a condominium board act honestly in good faith, one would expect that belief to have been stated expressly in the Board's September and January correspondence. I do not find that the notice in September of 2015 of determined contravention of Article 4.08(c) was sufficient to alert the Applicant to a link with the requested approval for air conditioning. Furthermore, it was disingenuous of the Board to deny approval of the air conditioning in January of 2016 based upon a manufactured reason unrelated to either the objective criteria for consideration of the approval application or its real reason for doing so – the business conflict. In the circumstances, therefore, it was oppressive and unreasonable for the Board to deny approval of the air conditioning as it did.

[61] Furthermore, the oppressive nature of the Respondent's actions was not cured by giving the revised notice of refusal on April 20, 2016. That notice, given as it was after this Origination Application was commenced, gives the distinct impression that the Respondent tailored a revised position in hopes of defeating the application. By that time, however, the harm had already been done.

[62] The unreasonableness of the Respondent's actions is exacerbated by the passage of time. Following receipt of the January 2016 letter it was reasonable for the Applicant to apply to this Court to seek a declaration that the Respondent had failed to comply with its duties under Article 4.05(d). The Respondent's attempt to cooper up its position by sending the letter of April 20, 2016 established clearly that it had no reasonable basis to deny approval for the air conditioning other than for the initially unstated reason of the massage therapy business issue. For the first time, the Applicant learned what resistance was really being applied. The application for approval of the air conditioning was made at the height of last summer. The Applicant will now have to act quickly to get air conditioning installed in time for this summer. Had the matter been dealt with by the Board from the outset in an honest and forthright manner, the issue concerning the non-competition provision may have been resolved long before now.

[63] I am aware that boards such as that of the Respondent are comprised of volunteers and that they should not be held to too high a standard for fear of discouraging people from serving. I am also aware that by buying into a condominium and not buying a freehold property, a unit holder submits herself to the rules of the condominium corporation and may have to forego an individual benefit for the common good. Nevertheless, condominium boards are required to deal with unit holders honestly and in good faith.

[64] The Respondent has raised no objection to the installation of air conditioning in the Unit, other than its declaration that the Application is in violation of the non-competition provision of the Declaration. Consequently, given my finding of an absence of honesty and good faith, there is no reason why the application for air conditioning should not be approved.

DISPOSTION

[65] Although the Applicant has claimed damages, no evidence was adduced in support of such a claim. No damages are awarded.

[66] It is declared that the Respondent failed to act honestly and in good faith in the manner by which it denied the Applicant approval for the installation of air conditioning in the Unit. Consequently, the Respondent has failed to effect compliance with Article 5.05(d) of the Declaration.

[67] The Applicant shall have its costs to be taxed according to Column III of the Scale of Costs.

_____

ROBERT P. STACK
Justice