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***Waterloo North Condominium Corp. No. 37 v. Silaschi,* [2012] O.J. No. 4505 (S.C.J.)**

The condominium brought an application for a declaration that a unit owner, Silaschi, breached section 98 of the *Condominium Act, 1998,* and the declaration. The condominium sought an order permitting it to enter the owner's unit to remove window frames that were installed in the balcony area without the approval of the board of directors.

In or around 2007 the condominium's engineers investigated the balconies to develop a program of repair and maintenance. The engineers discovered that many of the enclosures installed on the balconies by the owners did not comply with the Building Code and posed a safety concern. At a 2010 owners' meeting the board presented options to the owners that had installed balconies enclosures. All of the owners except for Silaschi eventually agreed that rectification work needed to be carried out on the balcony enclosures and opted for one of the options presented. Silaschi refused to remediate the enclosure claiming that the window frames and enclosure were installed by the previous owner and that they had been in that condition since at least 2006 when he purchased the unit. Silaschi also argued that the frames did not pose a safety hazard and that their removal was not warranted. He also argued that the condominium's application was barred by the *Limitations Act, 2002.*

The court held that the condominium was entitled to enter the unit to remove the window frames from Silaschi's unit. The court held that the installation of the window frames was contrary to section 98 of the *Condominium Act, 1998,* as the window frames were installed without the approval of the board of directors and entry into an indemnity or section 98 agreement. The court also held that Silaschi's refusal to allow the condominium to enter the unit necessitated the application.

The court also found that the condominium's application was not barred by the expiration of a limitation period or the doctrine of laches. The court held that the condominium's application was not statute barred by the *Limitations Act, 2002*, as it was an application to enforce the *Condominium Act, 1998,* and not solely the condominium's declaration. The result may have been different if it had been a breach of the condominium's declaration, by-laws or rules alone. In addition, the owner's argument that the condominium had "slept on its rights" making the application unreasonable was dismissed. The condominium's declaration contained a clause that said any failure to enforce any provision of the Act, declaration, by-laws or rules, irrespective of the number of violations or breaches, shall not constitute a waiver of the right to do so thereafter. Finally, the court held that there was no unreasonable delay by the condominium in launching the application once it became clear that Silaschi would not comply.

On November 1st, 2012, the court released its decision on costs. The condominium sought costs of $11,093.98. The court was not satisfied that full indemnity costs were warranted as an award of costs. As such, the condominium was awarded $5,729.30. The court also declined to award the costs which will be incurred in carrying out the remedial work to the unit as they were not damages which had been incurred by the condominium at the time the cost submissions were made.

Bottom line: a condominium may commence an application for an order allowing it to enter a unit where an owner refuses entry to the unit. The condominium may be entitled to an order allowing it to remove a balcony enclosure, or other unapproved change to the common elements, if the owner fails to comply with the requirements of section 98 of the *Condominium Act, 1998,* such as the prior approval of the board of directors and entry into an indemnity agreement. Furthermore, the condominium may commence an application against an owner for failing to comply with the *Condominium Act, 1998,* even if more than two years have passed since the board of directors became aware of the non-compliance. An application made based upon a breach of the condominium's declaration, by-laws or rules may be statute barred if commenced more than 2 years after the non-compliance was discovered or ought to have been discovered.

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***Dyke v. Metropolitan Toronto Condominium Corporation No. 972,* [2013] ONSC 463 (S.C.J.)**

The applicant/owner owned two units in a high rise condominium building. One unit was used as her residence, while the other was used to operate a law practice. In February 2010, new tenants moved into the unit above the applicant's. The new tenants used their unit as a professional dance studio. The applicant complained to the tenants, the condominium's security officer and property management office about the noise on numerous occasions. There were a number of security reports verifying the excessive noise coming from the tenants' unit. Despite the owner's complaints, the condominium and its property management company never sent any letters about the noise to the tenants. The condominium's property management office then began targeting the owner by sending her letters advising her that she must remove her small dogs and cease using her unit as a law practice. They also alleged that the excessive noise could not be verified.

When the condominium and its property management office failed to take any steps to rectify the noise issue, the owner commenced an application seeking an order that the condominium enforce its own by-laws and rules. She also sought an order for special damages incurred as a result of herself and her daughter having to move out of her unit and renting alternate accommodation.

The court held that the condominium had failed to satisfy its duty under section 17(3) of the *Condominium Act, 1998,* which states:

> **Ensuring compliance**
> (3) The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.

The court also held that the condominium unfairly disregarded the owner's interests in failing to take adequate steps to enforce its rules. The court held that the harassment of the owner by the condominium also constituted unfairly prejudicial conduct, contrary to section 135 of the *Condominium Act, 1998.* As a result, the condominium was ordered to pay $40,325.78 in special damages to the owner. The court refused to award damages for pain and suffering, mental anguish and distress, loss of income, or loss of comfort and quiet enjoyment. The court also awarded the owner costs in the amount of $19,500.00.

In *obiter* the court stated that the owner does not have a right to absolute quiet in her unit. However, the court held that she was entitled to a certain level of quiet enjoyment, which clearly did not include living below a dance studio in a residential condominium.

Bottom line: This case confirms that a condominium has a duty to ensure compliance with the *Condominium Act, 1998,* and its declaration, by-laws and rules pursuant to section 17(3) of the *Condominium Act, 1998*. The court also confirmed that failing to do so may result in a finding of oppressive conduct against the condominium pursuant to section 135 of the Act and serious cost consequences for the condominium. Finally, the court stated that the owners do not have a right to absolute quiet in units.

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