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Grigoriu v. Ottawa- Carleton Standard Condominium Corporation No. 706 [2014] O.J. No. 2218

This is a case that involved an application to the court for an order pursuant to section 135 of the *Condominium Act, 1998* (the "Act"), for an oppression remedy. This section of the Act allows a unit owner, developer, corporation or mortgagee to apply to the court when the behaviour of one of the previously mentioned groups appears to be oppressive, unfairly prejudicial or unfairly disregards the interests of the applicant. In this case, the application was started by two unit owners after the condominium amended its declaration.

In 2005, two unit owners purchased a residential unit within one condominium building, and subsequently purchased parking units and a storage unit within another condominium building (Ottawa-Carleton Standard C.C. No. 706). There was nothing in the condominiums respective declarations that would prohibit such a purchase. However, nearly five years later Ottawa-Carleton Standard C.C. No. 706 (the "Condominium") amended its Declaration to include a provision that prohibited non-residents from owning or using parking units or storage units within the Condominium. Although the Condominium agreed not to enforce the provisions against the unit owners as long as they owned their residential unit, it prevented them from transferring the parking units and storage units to non-residents upon the sale of their residential unit. The unit owners claimed that the effect of the declaratory amendment was oppressive, and asked the Court to require the Condominium to further amend its Declaration to include a specific exemption for their units.

Upon analysis, it was determined that the amended declaration was oppressive and unfairly disregarded the interests of the applicant unit owners. The applicant unit owners were the only owners that were prevented from selling their parking and storage units with their residential unit. The restriction undermined the owners' ability to sell their residential unit. The court ordered that the Condominium amend their Declaration to include an exemption that would allow the applicant unit owners to sell their parking and storage units with the residential unit.

Bottom Line: Pursuant to section 135 of the Act, if conduct is found to be oppressive or unfairly prejudicial, a court may make any order it deems proper, including 1) prohibiting the conduct referred to; and, 2) requiring the payment of compensation. This case is significant in that it further defines what types of orders a court may make pursuant to section 135; namely, that a court has the authority to require that a corporation amend its declaration if oppressive conduct is found. Further, generally a condominium or developer is granted flexibility in what restrictions or obligations are placed in a declaration. Specifically, section 7 of the *Condominium Act, 1998*, allows a condominium to impose restrictions on leases or sales of units. This case is also significant in that it appears to curb a condominium's authority to place restrictions within a declaration, without first considering the indirect effects such restrictions may have on individual unit owners.

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