CITATION: *O'Regan v. Carleton Condominium Corp., et al*, 2023 ONSC 5241
COURT FILE NO.: CV-20-84874
DATE: 2023/09/18

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Joseph O'Regan	)	Self-represented
	)	
Plaintiff	)	
	)	
– and –	)	
	)	
Carleton Condominium Corporation 169 and Apollo Property Management Limited and Joseph Muchmore	)	Rodrique Escayola and David Plotkin for the Defendants
	)	
Defendants	)	
	)	
	)	
	)	**HEARD:** March 24, 27, and 29, 2023

DECISION ON MOTION FOR SUMMARY JUDGMENT

HOOPER J.

Overview

[1] This is a very unfortunate case where stubbornness prevailed over pragmatism and common sense.

[2] In December 2018, Mr. O'Regan left eggs cooking unattended. Forgetting to turn off the burner, he left his condominium to run errands. Another condominium owner smelled an odour, heard the in-unit fire alarm sounding, and reported it to the building's cleaner who alerted the superintendent. After knocking, the superintendent let himself and the cleaner into O'Regan's unit, turned off the stove, and opened some windows.

[3] With smoke and a burning odour present in the buildings' hallways and staircases, the superintendent contacted a remediation company for assistance. The total remediation cost was $8,637.03. The Condominium Corporation's Board (the "Corporation") made a business decision not to file such a small insurance claim. Instead, they paid the entire remediation amount and asked O'Regan to only reimburse their insurance deductible. He refused to pay. The corporation suggested O'Regan put this claim through his own insurance, meaning he would only be responsible for paying his own deductible of $1,000. He maintained his refusal.

[4] The Corporation added the unpaid insurance deductible to O'Regan's unit's common expenses. It remained unpaid. They gave notice and registered a lien on title. O'Regan ignored the lien. The following year, when his mortgage came up for renewal, the mortgagor required proof of the lien's discharge before refinancing could be approved. O'Regan held firm and refinancing was denied. As O'Regan could not pay the balance owing on the mortgage, the mortgagor brought power of sale proceedings, and the condominium was eventually sold.

[5] O'Regan brought a claim against the Corporation, the property manager, and the superintendent on the basis of oppression pursuant to s. 135 (b) of the *Condominium Act, 1998*, S.O. 1998, c.19. The oppression claim primarily relates to the imposition of the lien on his unit and the damages he says this caused, although there are also ancillary issues raised that will be discussed below.

[6] The Corporation has now brought this motion for summary judgment against the Plaintiff seeking a dismissal of this action. They argue that, given their rights under the legislation and the circumstances of this case, there is no genuine issue requiring a trial.

[7] To be clear, a situation that could have been resolved with O'Regan paying $1,000 ended with him losing his home. Before me, over a three-day summary judgment motion, O'Regan maintained that he should not have been asked to pay a penny towards the remediation costs, and that everything flowing from his burning eggs was the Corporation's fault.

[8] For the reasons that follow, the motion for summary judgment is granted.

Nature of this claim

[9] In May 2016, O'Regan became the registered owner of unit 301 in the high-rise condominium building Carleton Condominium Corporation No. 169. He owned that unit until it was sold under a power of sale on March 8, 2022.

[10] While an owner, O'Regan claims he was unfairly treated/prejudiced by the Corporation numerous times. Four are relevant to the oppression claims made in this proceeding:

a. The Board's decision to register the lien;

b. The Board's decision to stop purchasing cleaning products from O'Regan's company;

c. The Board's refusal to hold an owner's meeting to discuss O'Regan seeking a second parking spot;

d. The Board's failure to repair a water leak within O'Regan's unit.

[11] The registration of the lien was the primary focus of the hearing. O'Regan conceded that the issues in (b)-(d) above are ancillary. If he had not lost his condominium, O'Regan would not have litigated those other matters. I will therefore deal with those three smaller matters at the end of this decision.

[12] Although O'Regan named Apollo Property Management and Muchmore in his claim, his causes of action are against the Corporation. There is no independent liability on these other two defendants.

Background facts leading to the sale of O'Regan's condominium

[13] As stated in the overview, in December 2018, O'Regan left his 3rd floor condominium unit while his eggs were cooking on the stove. There is no question that the eggs burned, causing smoke and odour. The fire alarm within O'Regan's condominium unit went off.

[14] Susan Fillman lives in the same building. Her unit is on the 26th floor. As part of her exercise regime, she likes to take the stairs rather than the elevator. On the day in question, Fillman was walking down the stairs when she noticed a burning smell. As she continued to descend, the smell grew stronger. By the time she reached the 6th floor, she could hear the sound of an in-unit fire alarm. Opening the door at the 3rd floor, Fillman could tell this was the floor where the fire alarm was ringing. She walked down the hallway and identified the burning odour and fire alarm as coming from Unit 301.

[15] Fillman located the building's cleaner, Mandell Wiggins, who went to the third floor and knocked. There was no answer. The superintendent, defendant Joe Muchmore, was then notified. He and Wiggins reattended at Unit #301 and knocked again. The smell of smoke was evident. Concerned a resident may be trapped within the unit, Muchmore used his master key and opened the front door. He was greeted by a thick wall of smoke coming from the kitchen. Muchmore went to find the source of the smoke, while Wiggins began to open windows to air out the unit.

[16] The front doors to the building's units are weighted to swing close automatically. O'Regan suggests that the door must have been propped open by Muchmore, allowing smoke to enter the hallways. Muchmore specifically denies this. When he entered the unit, the door closed within a few seconds, as it was designed to do.

[17] Upon entering the unit, Muchmore located the pot with the eggs, turned off the stove, and took the pot out to the balcony. Satisfied that the emergency was over, Muchmore and Wiggins left and Muchmore contacted his superiors for instructions on next steps. He was instructed to call Service Master, an Ottawa remediation company.

[18] Service Master asked Muchmore to confirm the number of floors with a smoke smell in order to properly estimate the number of air scrubbers needed. Muchmore did a walkthrough. He smelled smoke in eight or nine hallways and in the stairwells. Service Master attended that same evening, cleaned the 3rd floor hallway walls, ceiling, and floor, and installed fifteen air scrubbers throughout the building to remove the lingering odour. Those scrubbers were present for several days.

[19] O'Regan takes the position that none of the remediation was necessary. His evidence is that he barely noticed any smoke smell when he returned to his unit later that day. He denies there was any odour that necessitated air scrubbers in hallways on other floors or the staircase. It is his view that Service Master gouged the Corporation by exaggerating what was needed.

[20] Fillman's affidavit confirms that the smell of smoke lingered in the building for several days. This evidence was consistent with the affidavit of Nancy Gabler, a member of the Corporation's board and a resident in the building on the 7th floor, who also swore an affidavit confirming that there was a burnt smell in the building for several days.

[21] The total remediation cost, including HST, was $8,637.03. The Corporation sought reimbursement from O'Regan of $5,000, their insurance deductible. When he refused, they added this amount to the common expenses for his unit and wrote to him that he had thirty days to pay. At the expiry of this deadline, the Corporation's lawyers sent a *Notice of Lien to Owner*. With interest and legal costs, the amount now due was $6,042.10. A lien was registered on title in that amount.

[22] What happened after the lien was registered remained unclear until, in response to an inquiry from the court during this hearing, O'Regan filed an affidavit enclosing correspondence from his mortgagor. Although the Corporation objected to this affidavit, the court received it as evidence as it provided a missing piece to this puzzle.

[23] From that affidavit and its attached exhibits, we now know that on August 14, 2020, Community Trust Corporation wrote to O'Regan requiring proof that the lien had been paid. Given O'Regan's refusal to pay off the lien, he could not satisfy this request. As a result, CTC agreed to a short-term renewal with a maturation date of February 16, 2021.

[24] In November 2020, O'Regan commenced the within action and brought his own summary judgment motion against the Corporation on the issue of the validity of the lien. Associate Justice Kaufman (as he then was), expedited the hearing of that motion so that a decision could be rendered before the short-term mortgage matured. In finding that the lien was valid, Associate Justice Kaufman carefully reviewed the chronology and the provisions under the *Condominium Act*.[1] O'Regan did not appeal this decision.

[25] Upon the maturity of the mortgage, CTC commenced an action in the Superior Court of Justice. On March 16, 2021, CTC caused a notice of sale to be issued and served. Summary judgment was granted in favour of CTC on October 26, 2021. CTC obtained possession of the property in March 2022, and the property was sold with a closing date of May 24, 2022.

[26] O'Regan takes the position that, since the remediation work was not required in the first place, registering the lien was oppressive conduct resulting in the ultimate loss of his home. He seeks damages for that loss.

[27] To prove the remediation work was not required, O'Regan focused on three areas of evidence. First, he retained the services of Jeffrey Narraway, a retired firefighter, as an expert. The admissibility of Narraway's reports was challenged by the Corporation. Second, O'Regan attached

---

[1] *O'Regan v. Carleton Condominium Corporation 169 et al*. 2021 ONSC 945

pictures to his affidavit that he argues prove there was no smoke damage. Third, O'Regan retained a videographer to assist in what was called a "re-enactment" of the smoke effect. Parts of the video were played during O'Regan's submissions.

[28] The Corporation's position is each step they took in relation to dealing with the smoke and odour from O'Regan's unit was reasonable and within their power under the *Condominium Act ("Act")*[2]. They argue that it was O'Regan's negligence coupled with his unreasonable refusal to mitigate his loss that created this entire situation.

Preliminary Issues

[29] Two procedural motions were brought at the commencement of this hearing:

1. Mr. O'Regan brought a motion for leave to amend his Statement of Claim

2. The Corporation brought a motion to strike the expert reports of Jeffrey Narraway

Preliminary Issue 1 – Should leave be granted to the Plaintiff to amend the Statement of Claim?

[30] The Plaintiff has filed a Fresh As Amended Statement of Claim with several proposed amendments. Rule 26.01[3] sets out the general power of the court to amend pleadings:

> **26.01** On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

[31] In *Marks v. Ottawa (City)*[4] the Ontario Court of Appeal summarized the requirement for leave:

(a) An amendment should be allowed unless it would cause an injustice not compensable in costs;

(b) The proposed amendments must be shown to be an issue worthy of trial and *prima facie* meritorious;

(c) No amendment should be allowed which, if originally pleaded, would have been struck;

(d) The proposed amendment must contain sufficient particulars.

---

[2] 1998, SO 1998, c.19
[3] *The Rules of Civil Procedure,* R.R.O. 1990, Reg. 194 (*"Rules"*)
[4] 2011 ONCA 248 (ON CA)

[32] The Corporation takes the position that the amendments plead evidence and do not create a meritorious claim that requires a trial.

[33] While pleadings must be read generously, and the court recognizes O'Regan is self-represented, the basic rules remain. I find that the proposed amendments to paragraphs 3, 42, 45, and 47 plead evidence. The amendments to paragraphs 43, 44, and 46 do not create a triable issue. Leave is not granted with respect to those paragraphs.

[34] With respect to the new paragraph 48, O'Regan pleads that upon receiving the Muchmore affidavit, he discovered that Muchmore and Wiggins were negligent in the manner in which they opened the windows. That pleading has the potential to create a triable issue. As a result, leave is granted to add this paragraph to the Statement of Claim. I will consider this paragraph in my analysis of whether to grant summary judgment.

Preliminary Issue #2 – Are the expert reports admissible on this motion?

[35] The Plaintiff filed two expert reports signed by Jeffrey Narraway of JBNar Consultants Inc.[5] The Corporations brought a motion to strike these reports from the record before me.

[36] The test for the admissibility of expert evidence is based on the criteria set out in *R. v. Mohan*[6] as follows:

a) Relevance;

b) Necessity in assisting the trier of fact;

c) The absence of any exclusionary rule, apart from the opinion rule itself; and

d) A properly qualified expert.

[37] In *White Burgess Langille Inman v. Abbott and Haliburton Co.*[7], the Supreme Court divided the admissibility requirement into two distinct steps. First, a trial judge considers the four Mohan criteria. Then the judge balances the potential risks and benefits of admitting the expert evidence.

[38] In my view, the admissibility of the Narraway reports turns on the first two parts of the *Mohan* test: relevance and necessity in assisting the trier of fact. I will deal with necessity first.

---

[5] In their material, the defendants refer to three expert reports dated as follows April 13, 2022, January 10, 2023 and January 23, 2023; however the last report amends the first. Only the January 10, 2023 and January 23, 2023 have been considered for the purposes of this motion.
[6] 1994 CanLII 80 (SCC), 1994 SCC 80
[7] 2015 SCC 23, [2015] 2 S.C.R. 182

Is the report necessary to assist me on this motion?

[39] In determining whether an expert's evidence will be helpful to the court, a preliminary consideration must be the expert's independence or objectivity. A biased expert is unlikely to provide useful assistance.[8]

[40] An expert who simply parrots the client's position is of no value. The Corporation argues parroting has obviously occurred in this case because O'Regan admits to being the primary author of the draft reports.

[41] O'Regan is of limited means. He initially retained an insurance adjuster to assist him as an expert in this matter and would send the adjuster drafted portions of a report for the adjuster's review and revision. Unfortunately, the adjuster contracted COVID-19, became very ill, and no longer wanted to be involved in this litigation. In searching for a new expert, O'Regan found Narraway.

[42] O'Regan provided Narraway with the draft report he had created with the adjuster. According to Narraway, he reviewed that report, made some changes, and adopted the report as his own.

[43] After receiving the Muchmore affidavit, O'Regan and Narraway prepared a further report, Narraway once again adopting the final version as his own opinion.

[44] The language used in these reports enters the realm of advocacy. For example, Narraway "applauds" O'Regan for the stance he has taken. He refers to the entire situation as a "travesty". He speaks about abuse that occurs within the "unregulated" insurance industry. Under the heading "public interest" he infers that Service Master committed fraud. He concludes with a finding that the fault for the remediation rests with Muchmore and the Wiggins.

[45] However, there are paragraphs of these reports that could be assistive to the court. For example, Narraway has provided information on the manner in which smoke travels.[9] He also confirms the existence of the positive pressure ventilation system in this building[10]. If admissibility of these reports were raised at trial, I would conduct a *voir dire* to determine the areas, if any, upon which Narraway could provide expert opinion. On a summary judgment motion, where the Corporation is seeking a finding that there is no genuine issue for trial, I believe it would be unfairly prejudicial to O'Regan to simply strike the reports in their entirety on the basis of bias.

---

8 *Alfano v. Piersanti*, 2012 ONCA 297 at para. 105.
9 Narraway - January 10, 2023 report at paras. 20-23.
10 Narraway Amended Report – January 23, 2023 at para. 24-25.

Relevance

[46] More troubling than the language used, however, is the relevance of this opinion. Narraway began his career as a firefighter in 1980. When he retired nearly 30 years later, he was a Senior Fire Inspector. He has received awards of excellence and currently works with Global Affairs Canada in a variety of capacities including as a fire investigator. Based on his curriculum vitae, he appears to be well-qualified to give expert evidence on fire investigation.

[47] The overarching theme of Narraway's expert opinion is that Muchmore and Wiggins were negligent in how they responded to the presence of smoke in O'Regan's unit. Narraway concludes that it is this negligence that caused the need for any remediation. Generally speaking, negligence is the failure to behave with the level of care that a reasonable person would have exercised in the same situation. When the alleged negligent act is by a person with specialized training, the level of care is raised to the standard of a person with equal training acting under similar circumstances.

[48] Muchmore is the building superintendent. Wiggins is the building's cleaner. Yet, Narraway's opinion is based on protocols and procedures outlined by Ottawa Fire Services including the Ottawa Fire Department's Tactical Ventilation Protocol. There is no evidence before me that building superintendents and cleaners are required to be trained under fire fighter protocols and procedures. Narraway's opinion on issues of negligence has no relevance.

Conclusion on admissibility of these reports

[49] Having weighed the benefits and risks to this report, I will admit them as evidence but will disregard comments that amount to advocacy. I will not consider the procedures and protocols of Ottawa Fire Services. I will give little to no weight to Narraway's observations of photographs and video as they appear to parrot that of O'Regan. I have observed the photographs and video myself and I can make my own observations. The balance of these reports has been considered in this decision.

Substantive Issue on this motion

[50] The issue before me is whether any of the claims made against the defendants raise a general issue requiring a trial.

Law & Analysis

Summary Judgment

[51] This motion was brought under Rule 20 of the *Rules.* In a recent decision of Gomery J., she summarized the analysis that must be undertaken[11]:

---

[11] *Portelance v. 1343633 Ontario Inc.* 2023 ONSC 643

> [4] Rule 20.04(2) states that, on a motion under the rule, the court shall grant summary judgment if it "is satisfied that there is no genuine issue requiring a trial". In *Hyrniak v. Mauldin*, 2014 SCC 7, the Supreme Court of Canada held that judges should not assume that every case should go to a full trial. They should instead consider what procedures will permit a fair adjudication of the issues, bearing in mind the goal of securing the just, most expeditious, and least expensive determination of every civil proceeding on its merits.
>
> [5] A party responding to a summary judgement motion must put their best foot forward, and the Court is entitled to assume that each party has filed the available evidence: *Danos v. BMW Group Financial Services Canada*, 2014 ONSC 2060, aff'd 2014 ONCA 877 at paras. 13-22. If, on the record, the Court can make the necessary findings of fact and apply the law to those facts, there is no genuine issue for trial.
>
> [6] A judge hearing a summary judgment motion may exercise fact-finding powers in r. 20.04(2.1) to determine if there is a genuine issue of trial, "unless it is in the interests of justice for such powers to be exercised only at a trial". These powers include weighing the evidence, evaluating the credibility of a deponent, and drawing any reasonable inference from the evidence. Where appropriate, the judge may, for the purpose of exercising these powers, order that oral evidence be presented by one or more of the parties; r. 20.04(2.2).

[52] When deciding whether to exercise the expanded fact-finding powers, the court must ask the following: "Can the full appreciation of the evidence and issues that is required to make dispositive findings be achieved by way of summary judgment, or can this full appreciation only be achieved by way of trial?"[12]. O'Regan's claim is based on oppression. To answer this question, a brief review of the *Act* as it relates to oppression is necessary.

[53] As confirmed by the Court of Appeal for Ontario in *Metropolitan Toronto Condominium Corporation No. 723 v. Reino*[13] the *Act* is a consumer protection legislation that contains various features designed to safeguard the interests of both existing and future condo unit owners.

[54] Section 135 of the *Act* creates a statutory oppression remedy that allows a unit owner to apply to the court for relief from conduct that is oppressive or unfairly prejudicial to the applicant, or that unfairly disregards the interests of the applicant:

> 135(1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Superior Court of Justice for an order under this section.

---

[12] *Combined Air Mechanical Inc. v. Flesch*, 2011 ONCA 764 at para. 41-44.
[13] 2018 ONCA 223

> (2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter.
>
> (3) On an application, the judge may make any order the judge deems proper including,
>
> > (a) an order prohibiting the conduct referred to in the application; and
> >
> > (b) an order requiring the payment of compensation.

[55] Section 135 of the *Act* is drafted in the same language as the oppression remedies set out in corporate statutes.[14] Corporate law principles regarding oppression are, therefore, applicable in determining what constitutes conduct that is oppressive, unfairly prejudicial or unfairly disregards the interests of a condominium owner in the context of condominium law.[15]

[56] The definitive analysis of the oppression remedy in the corporate law context is the Supreme Court of Canada's decision in *BCE Inc. v. 1976 Debentureholders*.[16] The Supreme Court recognized two prongs underlying the oppression remedy: (1) conduct that undermines the "reasonable expectations" of the parties; and (2) conduct that is coercive, abusive or unfairly disregards the interests of the minority. Both must be present before an oppression remedy is appropriate.

[57] The first element of reasonable expectations is both objective and contextual. What is reasonable will depend upon the facts of the specific case, the relationships at issue, and the entire context, including the fact that there may be conflicting claims and expectations.

[58] In considering the concept of reasonable expectations, the Supreme Court held in *BCE*, at para. 71:

> The remedy is focused on concepts of fairness and equity rather than on legal rights. In determining whether there is a reasonable expectation or interest to be considered, the court looks beyond

---

[14] *Toronto Standard Condominium Corp. No. 2130 v. York Bremner Developments Ltd.*, 2016 ONSC 5393, at para. 103

[15] *Polchil Homes Ltd. v. Peel Condominium Corporation No. 245*, 2023 ONSC 2364.

[16] 2008 SCC 69 (CanLII), [2008] 3 SCR 560.

> legality to what is fair, given all of the interests at play: *Re Keho Holdings Ltd. and Noble*.

Did the Corporation act fairly in seeking reimbursement for the remediation costs from O'Regan?

[59] A condominium corporation is created and governed by statutory provisions. When determining the reasonable expectations of a unit owner in relation to the actions of a condominium corporation, a starting point is whether or not the condominium corporation acted within their powers under the *Condominium Act* and its by-laws and declarations. If it did, the court should then consider whether the overall treatment of the owner was objectively unreasonable, oppressive, unfair, or unduly prejudicial.

[60] In reviewing the *Act*, by-laws, and declarations in this case, there was clear authority for each and every step the Corporation (or its employees) took. For instance, the Corporation's declarations contain a specific right of entry in an emergency situation (which this was). It also has an obligation to all unit owners to remediate the common areas if there is smoke and odour present.

[61] When the Corporation is required to perform repairs or remediation, and those repairs or remediation are caused by a unit owner, the Corporation has the right to charge that owner for the cost of that repair.

[62] The thrust of O'Regan's argument is that he did not cause the need for remediation. He argues: (a) there was no need for remediation; and (b) if there was any remediation required, it was due to the negligence of Muchmore and Wiggins.

[63] I find as a fact that remediation was required. The affidavit evidence before me demonstrates that there was a lingering odour present in the hallways on multiple floors for several days. I do not accept that the re-enactment video has any evidentiary value. I prefer and accept the witness evidence of the people who were in the building on the day in question. The video also does nothing to address the evidence of odour. There is no doubt there was odour in the building – this is what alerted Fillman to a problem in the first place. I also do not accept that the pictures produced by O'Regan prove anything other than he was very lucky the burning pot was found when it was.

[64] There was smoke. There was odour. It needed to be cleaned. I find that the remediation steps were reasonable as was the cost. There is absolutely no evidence of fraud or gouging.

[65] With respect to the alleged negligence of Muchmore and Wiggins, I will now deal with the amendment I allowed that raised this issue in the Fresh as Amended Statement of Claim.

Does the allegation of negligence create an issue requiring trial?

[66] O'Regan takes issue with the manner in which Muchmore and Wiggins aired out his unit. As part of his submissions, O'Regan took me through the wind speed and wind direction that existed when Wiggins started opening windows. O'Regan argues that the building's positive

pressure ventilation system is designed to push air out, but Wiggins overrode that system when he opened the wrong windows and air blew in.

[67] O'Regan also argues that Muchmore kept the unit's front door propped open. Muchmore denies this. I accept Muchmore's evidence on this point and find as a fact that the front door of the unit was not propped open.

[68] No standard of care was provided to me on what level of fire training is required of a building superintendent or a cleaner. Therefore, I must consider the actions of Muchmore and Wiggins in reference to a reasonable person faced with this situation. I find that these two individuals acted completely reasonably. They entered the unit concerned someone might be inside who needed assistance. When the burning pot was found, they did what any reasonable person would do – they turned off the stove and took the pot out to the balcony. It was also reasonable to open the windows. No one would expect an average person to consider wind direction or wind speed when deciding which window to open to air out a smoke-filled condominium. Muchmore and Wiggins were not negligent.

[69] Even if O'Regan could prove negligence on Muchmore or Wiggins, which I find he can't, these men are certainly not responsible for the entirety of this loss. All O'Regan was being asked to pay was $5,000 of the $8,637.03 (58% of the amount). If he had put it through his insurance, he would have paid 12% of the loss. He maintains that he should not have been asked to pay a penny. He is wrong.

[70] Therefore, the allegation of negligence in the allowed amendment does not create a genuine issue requiring trial.

Did the Corporation act fairly in registering the lien?

[71] The Corporation has an Insurance Deductible By-law that specifically allows it to charge the deductible to a unit owner who has caused an insurance claim. If unpaid, that deductible can be added to the unit owner's common expenses. O'Regan argues this is unfair. I adopt the comments made by Associate Justice Kaufman in his earlier decision in this matter, when O'Regan made this same argument: [17]

> [18] The *Act*'s principal object is to achieve fairness among owners, their tenants, their mortgagees and the corporation itself in raising the money to keep the common enterprise solvent. Owners must contribute to a common expenses fund in the proportions specified in the condominium's declaration. This common expense fund is the central mechanism to achieve financial fairness among the owners. If one owner fails to pay, the others must bear his burden. The *Act* aims to place the financial burden created by one unitholder's conduct on him or herself rather than

[17] *O'Regan v. Carleton Condominium Corporation 169 et al*. 2021 ONSC 945 at para. 18

> on the Corporation, which would effectively pass on the burden innocent unitholders.

[72] When common expenses are unpaid, section 85 of the *Act* is triggered. It states:

> 85. Lien upon default
>
> (1) If an owner defaults in the obligation to contribute to the common expenses payable for the owner's unit, the corporation has a lien against the owner's unit and its appurtenant common interest for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount.

[73] I find that a reasonable unit owner would expect the Corporation to take the steps necessary to recover common expenses that are properly charged but remain unpaid. It was not unreasonable, oppressive, unfair or unduly prejudicial for the Corporation to register the lien to secure this debt.

Who caused the sale of O'Regan's condominium unit?

[74] After the lien was registered, the Corporation was not involved in the issue of refinancing or the events that led to the power of sale. They cannot be held responsible for any losses suffered by O'Regan in the sale of his unit.

[75] O'Regan also failed to mitigate his damages at any time up to the power of sale. He could have paid the $1,000. He could have paid the lien. He could have included the amount of the lien in his refinancing. He alone is responsible for the loss of his home.

[76] As a result, the oppression claim for damages in relation to the registration of the lien is dismissed.

Is there a genuine issue for trial on the other ancillary issues?

Use of Mr. O'Regan's company's cleaning product

[77] Prior to 2017, the Corporation held a contract with O'Regan's company, Safetytec, to provide cleaning supplies and services. In or about 2017, the Corporation decided to terminate that contract and obtain cleaning supplies from another company.

[78] O'Regan took the position that the termination of this contract was oppressive. He demanded that the Corporation re-hire his company and buy his cleaning product. In his affidavit, O'Regan outlined the co-efficient of friction that he believes is necessary for slip-resistant flooring. It is his position that the new cleaning product does not meet the minimum co-efficient recommended by of the National Floor Safety Institute. He has done testing and has included the test results in the record before me in an attempt to demonstrate that the new cleaner is an inferior product.

[79] Leaving aside the fact that O'Regan's evidence on friction is expert evidence he cannot provide, this entire claim is untenable. The Corporation has a duty to maintain the common elements and it has the right to make decisions on what products it uses to fulfill that duty. Decisions by a condominium corporation are not oppressive simply because an owner disagrees with them.

[80] This issue is also unrelated to O'Regan's status as an owner. It is a private contract. It cannot form the basis of an oppression claim under the *Act*. This issue does not require a trial. The claim related to the Corporation's decision to change cleaning supplies is dismissed.

Parking Space

[81] In 2018, O'Regan owned two vehicles. His unit only came with one parking spot. To solve this problem, O'Regan began to park his second vehicle in a parking spot he did not own. It was a spot reserved for the superintendent. The Corporation asked O'Regan to stop parking there. O'Regan took the position that the superintendent rarely used that parking spot and it should be rented or sold to him. In support of his position, O'Regan submitted a petition and demanded an owners' meeting be held for a vote on this issue.

[82] The Corporation declined to schedule that meeting. As a unit owner, O'Regan could have called his own meeting: *see s. 46* of the *Act.* He decided not to do so. It cannot be unreasonable, unfair, or prejudicial for the Corporation to decline to hold a meeting when a unit owner is empowered to call one. This issue does not require a trial.

Water Leaks

[83] In 2020, Mr. O'Regan's air conditioning unit leaked into the unit directly beneath him, causing damage. The Corporation advised that they held O'Regan responsible. O'Regan denied responsibility. The Corporation eventually changed its position and O'Regan was not charged any amount for the repairs.

[84] In August 2021, a second water leak occurred, this time into O'Regan's unit from the unit above. The Corporation hired a contractor who confirmed that there was no damage to the floor, but there was minor staining on the walls and ceilings that could be painted over. O'Regan hired his own contractor who disagreed with the amount of damage. O'Regan also took the position that the 2020 and 2021 leaks were indicative of an overall structural deficiency within the building. He further alleged that this deficiency had caused considerable water infiltration to his unit over the years. He wanted repairs throughout his unit, not just to the area impacted in 2021.

[85] An impasse over the scope of work resulted and nothing was fixed. Before the issue could resolve, O'Regan's unit was sold through the power of sale proceeding. O'Regan did not repair the unit himself; however, he claims, without any evidence, that the unrepaired water damage reduced the value of his unit when it was sold.

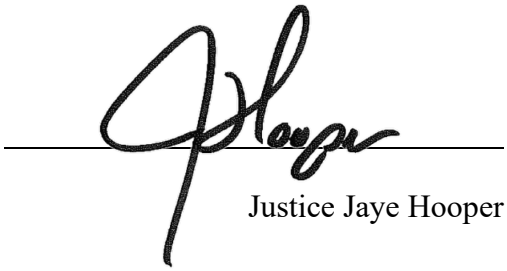
[86] I find that the Corporation acted reasonably when it limited the scope of work to damage caused by the water leak from August 2021. There is no evidence to support a finding of a

structural deficiency within the building. There is also no receivable evidence O'Regan suffered any damages in relation to this issue. There is no genuine issue for trial. This claim is dismissed.

Conclusion

[87] The motion for summary judgment is granted.

[88] The Corporation will have until September 29, 2023 to provide its cost submissions. Those submissions are not to exceed five pages in length, double-spaced, excluding a bill of costs and offers to settle. O'Regan will have until October 13, 2023 to provide responding cost submissions with the same page restriction.



Justice Jaye Hooper

Released: September 18, 2023