

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) THURSDAY, THE 21ST DAY
JUSTICE J. C. L. SCIME) OF DECEMBER, 2000

BETWEEN:

WENTWORTH CONDOMINIUM CORPORATION NO. 19

Applicant

and

MICHAEL FARRELL
and VOLTECH ELECTRICAL SERVICES LTD.
also known as VOLTECH ELECTRICAL SERVICES LTD.

Respondents

JUDGMENT

THIS APPLICATION was heard this day at the Court House, 45 Main Street East,
Hamilton.

UPON reading the Application Record and upon hearing the submissions of counsel for
the Applicant and the submissions of the Respondents,

1. THIS COURT ORDERS AND ADJUDGES THAT the Respondent, Michael Farrell
comply with the duties imposed on him by the Condominium Act and the Declaration,
By-laws and Rules of Wentworth Condominium Corporation No. 19 and the Trespass to
Property Act, and, in particular, the Respondent, Michael Farrell, shall immediately
remove any and all commercial vehicles, including a van marked with Voltech Electrical
Services Ltd. signage, from the common elements of the Condominium Corporation.

2. THIS COURT ORDERS AND ADJUDGES THAT the Respondent, Michael Farrell, is hereby restrained from parking any other commercial vehicles on the common element areas of the Condominium Corporation without written approval of the Corporation's Board of Directors.

3. THIS COURT ORDERS AND ADJUDGES THAT the Respondent, Michael Farrell, shall pay the Applicant its costs of this Application on a solicitor and client basis, after assessment, except that there shall be no costs of the meeting that was requisitioned under section 19 of the Condominium Act.

Paul R. Pirre

Local Registrar

ENTERED AT HAMILTON	
in Book No.	132
as Document No.	50
on	Jan 22 / 01
by	<i>[Signature]</i>

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT HAMILTON

ORDER

SIMPSON, WIGLE
Barristers and Solicitors
400 - 21 King Street West
P.O. Box 990
Hamilton, Ontario
L8N 3R1

B. CHRIS LANGLOTZ
Tel: (905) 528-8411
Fax: (905) 528-9008

Solicitors for the Applicant

MEMORANDUM

TO: DEREK
FROM: DIANE
DATE: January 4, 2001
LOC. NO. 76627
RE: WCC 19 v. FARRELL

Following is a transcription of Mr. Justice Scime's handwritten endorsement made December 21, 2000.

"The issue is that the prohibition in the Rules as to 'commercial vehicles' fails to comply with section 29 of the Condominium Act in that it is submitted by the respondent that it is not defined and is not reasonable.

I have considered Ont. C.A. York Condo v. Duerchih 1997 O.J. 378 as applicable to the issue before the court.

There is no dispute that the vehicle in question is a commercial vehicle - with commercial signs, racks and ladders, see photos tab F - and I so find.

The rules apply to owners, tenants, guests and visitors. See Rule 4.1(A) and 4.3.

The current version of the rules was passed in 1981 and were in existence when the respondent acquired his property in 1994, and he chose to take ownership subject to these rules.

On the requisition of the respondent, a meeting of owners was called under section 19 of the Act to repeal the commercial vehicle rule and on November 30, 2000, the meeting was held and the motion to allow commercial vehicles to park in driveways was defeated.

I do not find the rule to be ambiguous.

The rules by the Act must be reasonable and consistent with the Act. The court must not substitute its own opinion about the propriety of the rule unless it is clearly unreasonable or contrary to the legislative scheme, and deference should be paid to the rules deemed appropriate by a board and its members.

The restriction is not unreasonable or inconsistent with the Act. The threshold for overturning the rules reasonably made in the interests of unit owners is a high one as recognized by the Ont. C.A. supra. and in my view has not been met in this case.

Order is granted as requested in para. A and B of application.

The applicant is entitled to its costs and indemnification as covered by the rules. I, therefore, conclude that the applicant shall be entitled to costs on a solicitor and client basis to be assessed. No costs on requisition under s19 of the Act.

Mr. Justice J.C.L. Scime"

WENTWORTH CONDOMINIUM CORPORATION NO. 19
APPLICANT/RESPONDENT IN APPEAL

and

FARRELL, ET AL
RESPONDENTS/MICHEAL FARRELL
APPELLANT IN APPEAL

Court File No.

C 30619

COURT OF APPEAL FOR ONTARIO

BEFORE McMURRY CJ, ABELLA, MacPHERSON JJ. A.

DATE FRIDAY SEPT. 7, 2001

DISPOSITION OF APPEAL

We see no reason to interfere with the decision of the notary public. We do not find the ~~order~~ will be to require a reasonable. On the circumstances that will be ~~the~~ ~~order~~ ~~of~~ ~~2000~~ as ~~to~~ ~~the~~ ~~Respondent~~ ~~Farrell~~ ~~CPA~~

THE COURT OF APPEAL OF ONTARIO

APPEAL BOOK

T. CARMAN
Barrister & Solicitor
1367 Upper James Street
Hamilton, Ontario
L9B 1K2
905-388-8022 - phone
905-574-1991 - fax
Solicitor for the Respondents
File 000328