

CITATION: Walia Properties Ltd v. York Condominium Corporation No. 478, 2008  
ONCA 461  
DATE: 20080611  
DOCKET: C47679

COURT OF APPEAL FOR ONTARIO

BORINS, MACPHERSON and GILLESE

BETWEEN:

WALIA PROPERTIES LTD., KHALED and KARIM HEGAZY, SATOOR CANADA INC., GHANSHYAM and SHAKILA KAPOOR, RAJ KAMAL, SEEMA SHARMA, SHARMA PROPERTIES INC., MOHAMED QUAZIL BACCHUS, JASPAL SINGH KAJALA RASHMIKANT and MADHURIKA RUARELIA, SANJAY RUPARELIA, AMRIK S. GILL, AKIYA and ZAKIR MANDOZAI, MAOHAMMAD ASHRAF RAJPUT, ABDULRAHIM and AHMAD SIDIQ POPALZAY, MIAN MOHAMED MUHIBUR RAHMAN, MOHBUR COMPANY LTD.

Applicants (Respondents in Appeal)

and

YORK CONDOMINIUM CORPORATION No. 478 REXDALE MEWS INC., REXDALE (MORKI) INC., PAUL HARRY BURTON, ABDUL HAMID SAHEBZADA and DEENA SAHEBZADA

Respondents (Appellants in Appeal:  
Rexdale Mews Inc. and Rexdale (Morki) Inc.)

Stephen Turk for the appellants

P. Conway for the respondents

Heard and released orally: June 9, 2008

On appeal from the order of Justice Alison Harvison Young of the Superior Court of Justice dated August 7, 2007.

ENDORSEMENT

[1] The appellants appeal the application judge's conclusion that their conduct relating to the composition of the board of directors of the condominium corporation was oppressive.

[2] We see no merit in this submission. We agree with the application judge's reasons on this issue, especially paras. 27 and 28.

[3] The respondent's cross-appeal relates to para. 6 of the court's order: "This court orders that By-law 1 – Article 2.03 of the Y.C.C. 478 be enforced". Both parties agree that this component of the order violates the *Condominium Act*.

[4] As to remedy, the solution most consistent with the intent of the application judge is to amend the condominium corporation's By-law #1 to provide for a board of directors of five members – two residential unit owners, two commercial unit owners (all four elected by majority vote of all unit owners) and the fifth member elected in the manner set out in the current by-law.

[5] In all other respects, the by-law remains intact.

[6] Finally, we see no basis for granting leave to appeal to the appellants with respect to the motion judge's costs order.

[7] Accordingly, the appeal is dismissed and the cross-appeal is allowed.

[8] The respondent is entitled to its costs fixed at \$13,700 inclusive of disbursements and G.S.T.

"S. Borins J.A."

"J.C. MacPherson J.A."

"E.E. Gillese J.A."