

Case Name:
Peel Standard Condominium Corp. No. 721 v. Derveni

Between
Peel Standard Condominium Corporation No. 721,
Applicant, and
Rita Derveni and Esat Derveni, Respondents

[2007] O.J. No. 5585

Court File No. CV-07-0790-00

Ontario Superior Court of Justice

K.M. van Rensburg J.

March 30, 2007.

(6 paras.)

Counsel:

Appellant: B. Rutherford.

Respondent: Self.

ENDORSEMENT

1 K.M. van **RENSBURG J.**-- This is an application by the applicant condominium corporation under section 134 of the Condominium Act to require the respondents, the owners of Unit 11, Level 1 to remove a concrete walkway that was installed by them in 2005. The walkway has been installed on what is clearly part of the common elements of the condominium although it is adjacent to and connected to the Derveni's unit. The walkway was installed without the consent of the condominium Board which was required under the terms of the Declaration and the Condominium Act. The applicant has requested its removal first because it is illegal as it was installed without consent but also for the practical reasons that it may obstruct access to certain below grade utilities, because the condominium corporation is responsible for and has liability for all installations in common areas unless an agreement exists with the unit owner and because this would set a precedent for other unit owners who may wish to make similar installations.

2 While there does not appear to be anything unsafe or unattractive about the walkway and while it may be very useful to the unit owners, nevertheless it contravenes the Declaration and the Act and must be removed.

3 I have considered the respondents' assertion that the builder may have made certain statements from which the respondents' believed they were entitled to proceed with the walkway, however, even if that were the case it would not change the legal rights of the parties (see *Re Carlton Condominium Corp. No. 279* and *Rochon et al.* [1987] O.J. No. 417 (CA)).

4 Accordingly, the application is granted and an order shall go for the relief sought at para 1(a) of the Notice of Application. That is, the respondents shall remove the concrete walkway and restore the common elements to their original condition at the time the walkway was installed at their own expense and within 90 days.

5 Costs of this application are fixed at \$1500 inclusive of G.S.T. and disbursements and are payable by the

respondents to the applicant forthwith.

6 Approval of the draft order by the respondents is dispensed with.

K.M. van RENSBURG J.

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