

Case Name:
Chan v. Toronto Standard Condominium Corp. No. 1834

Between
Elizabeth Anne Chan, Applicant (Appellant), and
Toronto Standard Condominium Corporation No. 1834,
Respondent (Respondent)

[2012] O.J. No. 2156

2012 ONCA 312

Docket: C53242

Ontario Court of Appeal
Toronto, Ontario

J.C. MacPherson, E.E. Gillese and R.A. Blair JJ.A.

Heard: May 9, 2012.
Judgment: May 14, 2012.

(10 paras.)

Real property law -- Condominiums -- Condominium corporation -- Rights and obligations -- Repair obligations -- Units -- Declarations -- Other elements -- Statement of responsibility for repair and maintenance -- Conditions on occupation or use of units and common elements -- Appeal by condominium unit owner from dismissal of application to vacate condominium corporation's lien against title to her unit dismissed -- Evidence supported finding that water leaking from appellant's unit caused damage to neighbouring unit in amount of lien claim -- Corporation was entitled to an order enforcing single family use restriction in declaration which required appellant to remove locks from interior doors in unit that were in clear violation of declaration.

Appeal by Chan from the dismissal of her application to vacate a lien registered against title to her condominium unit. The judge found that the lien was properly registered by the condominium corporation in compliance with the statutory notice requirements and that the amount claimed of \$8,502 to repair a leak was in compliance with the declaration and rules of the corporation. The judge also granted the corporation's application to enforce the single family use restriction in the declaration and ordered Chan to remove locks she had installed on some of the interior doors in her unit.

HELD: Appeal dismissed. There was sufficient evidence to support findings that water leaking from Chan's condominium caused damage to the unit below and that Chan was in violation of the corporation's declaration regarding single family occupancy. The locks were in clear violation of the declaration and the judge was correct to order their removal on the corporation's application.

Statutes, Regulations and Rules Cited:

Condominium Act, R.S.O. 1990, c. C.26

Solicitors Act, R.S.O. 1990, c. S.15, s. 9

Appeal From:

On appeal from the judgment of Justice Beth A. Allen of the Superior Court of Justice, dated January 6, 2011.

Counsel:

Michael Spears, for the respondent.

Elizabeth Anne Chan appearing in person, assisted by George Chan.

ENDORSEMENT

The following judgment was delivered by

1 THE COURT:-- The appellant Elizabeth Chan appeals from the judgment of Allen J. of the Superior Court of Justice dated January 6, 2011. In that judgment, the application judge dismissed the appellant's application to vacate a lien that was registered against title to her condominium unit on the basis that the lien was properly registered in accordance with the notice provisions under the *Condominium Act* and that the amount claimed (\$8502.28 to repair the damage caused by the leak) complied with the requirements of the Declaration and Rules of the Corporation.

2 In the judgment, the application judge also granted the respondent's application to enforce the single family use restriction set out in the Declaration and to order the removal of locks installed by the appellant on some of the interior doors in her unit.

3 The appellant appeals on three bases.

4 First, in relation to the water leak/lien issue, the appellant contends that the application judge made findings of fact in the absence of supporting evidence and ignored important case law in reaching her decision. We disagree. There was sufficient evidence to support the application judge's essential factual finding, namely, that the water damage in unit 2208 was caused by a leak in the appellant's unit, 2308.

5 Second, the appellant contends that the application judge erred by declaring that her unit was not a single family residence. The basis for this submission was that there were many other units in the condominium in which groups of non-family tenants resided.

6 In our view, the application judge was correct to conclude that the occupancy in unit 2308 was outside the Declaration and Rules of the Corporation. In addition, there was not a sufficient evidentiary record to support an estoppel grounded argument for the appellant.

7 Third, the appellant submits that the application judge erred by ordering the appellant to remove all locks installed on the interior doors of the unit. We disagree. These locks were a clear violation of the Declaration.

8 In support of its three grounds of appeal, the appellant seeks to introduce fresh evidence, namely, three affidavits. We decline to admit the fresh evidence. Two of the three affidavits are mainly a repetition of the existing affidavits put forward by the appellant and the third, Ms. Mecole's, has no real content or relevance.

9 Finally, the appellant challenges the costs award of \$41,706.28 on a full indemnity basis. We see no basis for interfering with this award. With respect to the appellant's argument that this award may be increased if the respondent seeks 'additional actual costs' above this amount, the appellant will have the right to have those costs, if demanded, assessed under s. 9 of the Solicitors Act.

10 The appeal is dismissed. The respondent is entitled to its costs fixed at \$7,000 inclusive of disbursements and applicable taxes.

J.C. MacPHERSON J.A.

E.E. GILLESE J.A.

R.A. BLAIR J.A.