Important Case Update: MTCC No. 1171 and Rebeiro; A Manager's Perspective

By Gerry Bourdeau, CMCA, AMS

On January 14, 2022, Judge FL Myers of the Ontario Superior Court heard an application by Metropolitan Toronto Condominium Corporation NO. 1171. MTCC No. 1171 sought an order from the court to force the Respondents (the Rebeiros) to either comply with the corporation's governing documents or to move out of the MTCC No. 1171 completely.

Interested readers can find the case here:
https://www.canlii.org/en/on/onsc/doc/2022/2022onsc503/2022onsc503.html

The impetus for the application was a dispute between several neighbours, in particular the adjoining neighbour and Ms. Rebeiro; however, this article will not go into the details of the accusations made by the condo or the disputing neighbors. The court's decision made clear that the court was reluctant to decide any facts of this matter – partially because little valuable evidence was adduced and partly because the court ultimately decided the appropriate venue of this dispute is mediation or arbitration (more on that later).

More relevant than the gory details of the neighborhood dispute (which involved Ms. Rebeiro being allegedly punched in the head), are sections 132, 135, and 134(5) of the Condominium Act, 1998. Section 132 of the Act imposes "an arbitration agreement into every condominium declaration," (see paragraph 30 of the judgement above). More accurately, among other things, it imposes a mediation and arbitration agreement in every declaration where there is a dispute involving the upholding of a condominium corporation's governing documents.

Section 135, perhaps confusingly, gives condominium corporations (as well as owners and mortgagees) the power to apply to the Ontario Superior Court of Justice for an order to have a party comply with provisions of the Condominium Act (an oppression remedy). Oppression remedies are a powerful tool and recently courts have concluded that they can be arbitrated instead of going to court as the section states "may apply to court" not "shall apply to court." Lastly, section 134(5) of the Act allows condominium corporations to recover all legal costs from an owner for having to obtain (successfully) an order against them.

The Court identified some tensions based on the foregoing sections (outlined in paragraphs 49 and 51 of the decision):
1. The Courts continually have to deal with these "she said/she said" dispute applications even though there are mediation and arbitration provisions in every declaration in Ontario.
2. In dealing with these applications, Courts need to decide whether there really is oppression under the Condominium Act or a dispute involving the governing documents of the condominium (and compliance
with those documents).
3. But, in many cases, it seemed to the Court that the reason there were so many corporations attempting to resolve disputes through application to the Courts rather than alternative dispute resolution was
because of section 134(5) that indemnifies corporations from paying for legal costs in the event

that they win. The Judge basically asks who wouldn't want to go to Court for free instead of paying for mediation
or arbitration?

In the instant case, the Judge decided to require the parties to use alternative dispute resolution – but why? Well, the Court provided a particularly relevant quote from the Court of Appeal in the matter of Toronto Standard Condominium Corporation No. 1628 v. Toronto Standard Condominium Corporation No. 1636: *"In our view, courts should generally be cautious in their approach to oppression claims of the type asserted here. In particular, courts should be wary of allowing such claims to overtake, and potentially distort, the dispute resolution process that lies at the heart of the Condominium Act, 1998, a central aspect of which is a preference for arbitration over court proceedings."*

So, what does any of this mean for managers and directors of condominium corporations? What (non-legal) advice could I give based on this case, to try to avoid similar situations?
1. To avoid the perception of a "she said/she said" dispute, make sure that owners involved in complaints keep a good record of whatever nuisance or danger they are experiencing. The more record keeping and
solid evidence the corporation and owners can produce, the more they help the judge to rule on facts.
2. Remember to be reasonable. Even if a unit owner is known to be trouble, or a director is known to be trouble, or whatever the case, a judge (indeed, an arbitrator too) will want to see that you've been
reasonable. This will play a major role when it comes to the condominium corporation recovering its legal and arbitration costs. In the instant case, the Judge did seem to be somewhat sympathetic with the
President of the Board who seemed to be the most neutral and reasonable.
3. When you're sending compliance letters or apportioning chargebacks (if chargebacks are available), make sure to send them to all parties that are reasonably alleged to have breached the corporation's
governing documents or the Act. The Court noted that no chargebacks were made to the party that allegedly punched Ms. Rebeiro.
4. When sending compliance letters, if you suspect an application for an oppression remedy is going to come up, make sure you mention it in the compliance letter. The Court noted that the condominium was
applying for an oppression remedy despite never having warned the Rebeiros about their breaches of the Condominium Act in their compliance letters (they only mentioned the governing documents).
5. Be judicious when charging back for legal fees and follow your lawyer's advice.
6. Lastly, and most importantly: remember that the courts are trending in the direction that the Condominium Act was not intended to incentivize court applications. It was intended to incentivize condominiums,
owners, and mortgagees to engage in mediation and arbitration to resolve their disputes. Consider proposing mediation in virtually all disputes even those where it is not technically required by the Act.

How will the Condominium Authority Tribunal play into this picture? What is the future of oppression remedies with reference to condominiums in Ontario? I will leave those questions to others! But if you're interested in alternative dispute resolution techniques for managing and resolving disputes, and insight into the mediation/arbitration process, please keep your eyes peeled for CAI Canada's upcoming webinar on mediation techniques and processes for condominiums.