

Another Condo Owner's Request for Administrator Denied by Court

In a [prior blog post](#), we reported on a case where the Court denied a condominium owner's application to appoint an administrator, after the Court determined that the corporation was quite capable of governing itself and that the Board members did meet the standards of care required under section 37 of the Condominium Act, 1998.

In another case, [2308478 Ontario Inc. v. YRCC No. 715](#), another commercial condominium owner was also unsuccessful in getting an administrator appointed by the Court. This owner based its application on claims that the Board failed to maintain an adequate reserve fund and make necessary roof repairs and also failed to address multiple parking issues (i.e. double parking, blocking of fire routes, unauthorized parking in visitor parking).

As set out in the case law ([Skyline Executive Properties Inc. v. MTCC No. 1385](#)), there are five factors to be considered in an application to appoint an administrator:

“whether there has been established a demonstrated inability to manage the corporation;

- whether there has been demonstrated substantial misconduct or mismanagement or both in relation to the affairs of the corporation;
- whether the appointment of an administrator is necessary to bring order to the affairs of the corporation;
- whether there is a struggle within the corporation among competing groups such as to impede or prevent proper governance of the corporation; and
- where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the corporation”.

While the Court in this case agreed that there had been substantial misconduct or mismanagement in relation to the affairs of the corporation, the Board ultimately did take the necessary corrective action in response to the owner's prodding. The reserve fund report recommendations to set aside \$71,000 in the reserve fund were adopted by the Board, the necessary roof repairs were carried out, a new management company was hired and the Ontario Parking Authority was retained to tag improperly parked cars. Had the application to appoint an administrator been brought earlier before the Board took action to address the owner's concerns, the Court may have been more inclined to appoint the administrator. However, the Court noted that the appointment of an administrator was to be used as a last resort.

While the application to appoint an administrator was denied, it was done on a without prejudice basis so that a further application could be brought if new circumstances and evidence arose with respect to future conduct of the corporation's affairs.

Although the owner's application was dismissed, the owner was awarded costs in the amount of \$2500, inclusive of fees, HST and disbursements since the owner's efforts resulted in the Board

improving its performance. Unfortunately for the owner, the owner's legal costs exceeded \$35,000 plus the owner will be required to pay his share of the corporation's legal fees which exceeded \$17,000 and will be charged to all of the unit owners as common expenses.