

Condo Owner's Request for Administrator Denied by Court

In a prior blog post, we reported about a case, ([Middlesex Condominium Corp. No. 195 v. Sunbelt Business Centres \(Canada\) Inc.](#)) involving a hydro expense dispute in a mixed-use commercial/residential condominium. In that case the condominium corporation was successful in its claim to recover hydro expenses going back six years from the sole owner of all the commercial units.

Unfortunately, the condominium corporation and the commercial unit owner (“Sunbelt”) found themselves in court once again. [Sunbelt brought a motion](#) requesting a limited-term appointment of an administrator of the condominium corporation, claiming that an administrator needed to be appointed for the following reasons:

- there has been an established and demonstrated inability on the part of the board to manage the corporation
- there has been demonstrated substantial misconduct or mismanagement in relation to the affairs of the corporation
- there is a struggle within the corporation between the residential owners and the sole commercial unit owner
- there is a need for objectivity

The condominium in this case is comprised of 28 commercial units on the first two floors and 45 residential units on the remaining five floors. The condominium's board consists of five directors, one of whom is to be a representative of the commercial owner, three of whom are to be residential owners and one at-large director.

There was a litany of complaints by Sunbelt about how things were being handled by the board, including the following allegations:

- water damage repairs were not carried out on a timely basis for the commercial units, only for the residential units
- management ignored complaints from Sunbelt's designate on the board, who was eventually removed from the board and replaced with another commercial owner representative
- there was an “us v. them” mentality against Sunbelt and Sunbelt's concerns were not given the same priority as those of the residential owners.

The Court found that Sunbelt's designate on the board was confrontational and difficult and deliberately tried to “*sabotage the governance*” of the corporation. The replacement of that board member allowed the board meetings going forward to be conducted in a more civilized manner. The Court also accepted evidence filed by the board that Sunbelt's concerns were in fact being adequately addressed.

After determining that the condominium building was in a reasonable state of repair and the financial status of the corporation was reasonably well-maintained, the Court concluded that the corporation was quite capable of governing itself and that the board members were in fact

meeting the standard of care set out in Section 37 of the Condominium Act, 1998. The Court noted that the standard of care of directors is not one of perfection and that the appointment of an administrator is “*a last resort for condominiums in perilous circumstances.*” “*Self-governance is the norm: administrators are the exception.*” While there were differences of opinion between Sunbelt and the board, Sunbelt did not show the Court why the corporation should not be managed by the elected board of directors.

Condominium owners need to understand that condominium ownership involves compromises. The condominium board of directors must balance the competing interests of all of the unit owners and in doing so, some of the board decisions will not please all of the owners. If the directors have acted honestly and in good faith and exercised the care, skill and diligence that a reasonably prudent person would exercise in comparable circumstances, then owners will have a difficult time challenging board decisions.