

Court Allows Substantial Changes to Condo Common Elements Without Approval of Condo Owners

In a prior blog post, we blogged about a case ([3716724 Canada Inc. v. CCC No. 375](#)) where the Court determined that a condominium corporation had unfairly disregarded the interests of a commercial parking unit owner, when it refused to allow the owner to make changes to the common elements to accommodate “pay and display” parking, unless the unit owner hired a full-time security guard or attendant.

However, the Court also held that it was proper for the corporation to treat the proposed changes as “substantial”. (As set out in section 97(4) of the [Condominium Act](#) (the “Act”), substantial changes to the common elements require the approval of the owners of 66 2/3 of the units in the condominium.) The Judge then requested further submissions from the parties as to whether the unit owners should be compelled to approve the proposed changes or what other remedy was appropriate. The condominium corporation argued that proposed changes should be submitted to a vote by the owners. The owner of the commercial parking units claimed that the Court had the authority to permit the changes without the necessity of a vote by the owners.

After considering those submissions, the Court released a subsequent decision and ordered that the unit owner of the commercial parking units was entitled to make the proposed changes to the common elements without any vote being put to the owners, notwithstanding the requirements of section 97(4). This conclusion was reached for several reasons:

- The owners would be in a conflict of interest position in the view of the fact that there was still an outstanding claim for damages by the owner of the commercial parking unit, stemming from the corporation having unfairly disregarded the owner’s interests.
- There was no way to prevent the owners casting their votes, from ignoring the Court’s finding that the requirement for a full-time security guard was unreasonable.
- The Judge, having had the benefit of the expert evidence concerning the merits of the safety measures that the commercial parking unit owner had proposed, in lieu of hiring a full-time attendant or security guard, determined that there was “no fair basis” to deny approval of the proposed changes.

The unit owner’s court application against the corporation was commenced under section 135 of the Act. This section allows the judge to “make any order the judge deems proper” where a party has unfairly disregarded the interests of the applicant or acted in a prejudicial or oppressive manner against the applicant. This is a powerful remedy that allows a judge to make ameliorative orders to rectify the effects of such wrongful conduct.

This broad wording enabled the Judge in this case to order that the proposed changes would be permitted without any need for a vote by or approval of the owners, as would otherwise be required by section 97(6).