CITATION: *Beswick et al. v. York Region Standard Condominium Corporation No. 1175,* 2020 ONSC 2785
COURT FILE NO.: CV-19-00625969
DATE: 2020-05-04

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
STEVEN BESWICK, ROBYN BESWICK, MITCHEL FREEDMAN, MARLENE FREEDMAN, ANDREW PAYNE, ANETTEE PAYNE, IDAN GAISINER, ALYSSA GAISINER, SOLITA HENDANDEZ-TAKACS, WHITNEY HOBLE, KIM WOHLSCHUTZ, JOSEPH BORD, ISABELLA BORD, MOHSEN ABDOOS, SANDI TANNER, IRINA KOLTUN, KENT KNOW KEY LI, MEDEA KAMAN LI, LARRY SALTER, CHERYL SALTER, SOLOMON BERZNOGER, SABINA BERZNOGER, EMANIUL SAGALOVICH, MARINA NEZHINSKY, VALENTINA RYKHLO, OLEKSANDR DRABENYUK, TATYANA FEDOTOW, ROANNE LATNER, VIACHESLAV LENETS, OLENA LENETS, LAURA RABINOVITCH, COBY ELIMELICH, SANDRA DASSAS, KIMMU BITTON, NTAALIE BITTON, SANDRA THUNA, LY YANG, ZHONG YI, SHEILA MEEL, WENDY LEUNG, GREGORY PANG, DORIS SUI PUNG PANG, SHUI YIN PANG, YANG SI, MEHRZAD SOHRABI, FIROUZEH MIRROKHIAN, LINA PLAYFORD, EDITH ROSS, JOEL ROSS, RAFAEL MONTANO, KAROL VERA, NISSIM KEHIMKAR, REZINA KEHIMKAR, PAUL LAM, LIS LAM, HUYNH LE DINH, YOUNG TAEK OH, YUN KYOUNG KIM, EMILIANO INTROCASO, JACQUELINE DUNAL, JAMES KOVACS, PATRICIA KOVACS,	)	*Shawn Pulver*, for the Applicants

ISIDORE DASSAS, JULIA LEVIN NORMAN TOLLINSKY Applicants **– and –** York Region Standard Condominium Corporation No. 1175 Respondent	)	*Marek Tufman*, for the Respondent **HEARD:** February 5, 2020

C. J. BROWN J.

REASONS FOR DECISION

[1] The applicants bring this application pursuant to the *Condominium Act* 1998, S.O. 1998, c. 19 ("the *Act*"), for *inter alia*, oppression and various forms of declaratory relief.

[2] The York Region Standard Condominium Corporation 1175 ("YRSCC 1175" or "the Condominium Corporation"), which was created by Declaration registered June 9, 2010 is composed of 538 total residential units divided into 470 high-rise condominium units and 61 town house units. The applicants comprise 37 of those townhouse units. The Board of Directors is composed of five members. From August 2010 to February 2012, the Board included three members from the townhouse units and two from the high-rise units. Thereafter, and to the present, it has been composed of three members from the high-rise units and two from the townhouse units, with the exception of November 2017 to November 2018, when there were four members from the high-rise units.

[3] It is the position of the applicants, all of whom are owners of townhouse units, that they have been oppressed and unfairly treated by the high-rise dominated Board of Directors of the Corporation. They claim damages for oppression and various forms of declaratory relief. They claim that since 2012, the majority of Board members have been high-rise unit owners, who have treated the townhouse unit owners inequitably, in an oppressive manner, and have, without notice, charged them for expenses and costs not previously charged.

[4] Their complaints, all framed in oppression, are as follows:

1. *Steps and Interlock.* They claim that 37 of the townhouse units were charged for the replacement costs of their exclusive use steps and interlocking totalling $5,016.02 each, without providing the affected owners with any advance notice or warning of their purported obligation to repair the exclusive use common elements at their own cost.

2. *Water charges.* The Board of Directors sent correspondence dated April 18, 2019, charging each of the townhouse units for water charges that related to the period from February 2018 to December 2018. No previous notice had been provided to the

applicants. These water charges were not based on actual water metre readings, in breach of section 10(c)(i) of the Condominium Declaration;

3. *Maintenance/Landscaping/SnowRemoval.* The townhouse units were unilaterally required to assume responsibility for the maintenance, landscaping and snow removal of their front verandas and gardens, without a corresponding decrease in maintenance fees and in breach of the Declaration, for the first time since registration of the Corporation;

4. *Amenities.* The townhouse units were unilaterally required to pay for amenities for the first time since May 2011.

[5] It is the position of the respondent that their conduct has been exemplary and in the best interests of the Corporation and owners. They submit that they have treated the applicants fairly and reasonably throughout, they have provided the appropriate notices, that the past Boards of Directors had poorly managed the Corporation and that when the current Board was elected, it began to implement the Declarations and Bylaws of the Condominium Corporation, charging the appropriate owners for appropriate services, expenses and repairs. This was done in an effort to return the Corporation to compliance with the Declaration and to return the Corporation to financial health. Further, the respondents submit that the owners should have all been aware of the provisions of the Declaration and owners' responsibilities for payment of expenses set forth therein, and which form the basis of the issues raised in this application. As a result, the townhouse owners should have been aware of their responsibilities without notice being required to be given to them.

[6] I note from the evidence adduced in this application, that not even the Board Members appeared to be aware of what was in the Declaration until sometime in 2018, and even then, the president, in cross-examination on her affidavit was not aware of specific, relevant provisions of the Declaration.

[7] The Declaration, as regards the issues set forth at para.4, above, states as follows:

Section 6-Exclusive Use Common Elements and Visitors' Parking Spaces

c) Subject to the provisions of the Act, the Declaration, Bylaws and Rules, the Owner of each residential dwelling Unit shall have the exclusive use of those parts of the common elements as set forth in Schedule "F" attached hereto, it being understood that the exclusive use being enjoyed by such Unit Owners entitled to same may be regulated or affected by any bylaws or Rules of the Corporation.

Section 8-Meaning of Common Expenses

Common expenses shall be the expenses of the performance of the objects and duties of the Corporation and, without limiting the generality of the foregoing, such other costs, expenses and sums of money designated as common expenses in the Act, or in this Declaration, or as are listed in Schedule "E" attached hereto.

Section 10a-Reserve Fund

(i) The Corporation shall establish and maintain one or more reserve funds in respect of the common elements and assets and shall collect from the Owners, as part of their contribution toward the common expenses, amounts that are reasonably expected to provide sufficient funds for major repair and/or replacement of common elements and assets of the Corporation, all in accordance with the provisions of the Act.

(ii) No part of the reserve fund shall be used except for the purposes for which the fund was established. The amount of the reserve fund shall constitute an asset of the Corporation and shall not be distributed to any Owner except on termination of the Corporation.

(iii)In accordance with section 94 of the Act, the Corporation shall conduct periodic studies to determine whether the amount of money in the reserve fund and the amount of contributions collected by the Corporation are adequate to provide for the expected costs of major repair and replacement of the common elements and assets of the Corporation.

Section 10(c) 1. Water The Corporation will receive billing statements from the municipal water authority for the water supply to the townhouses residential dwelling Units (the "Water Consumption Charge") and will accordingly be responsible at first instance to the said municipal water authority for payment in full of the bulk water bill so received for the water consumed by the townhouse residential dwelling Units. It is understood and agreed by each townhouse residential dwelling Unit Owner that all townhouse residential dwelling Unit Owners shall, forthwith upon presentation of the bulk water bill by the Corporation, pay their respective share thereof which shall be conclusively determined as follows: the Declarant shall install separate check or consumption meter(s) appurtenant to each townhouse residential dwelling Unit in the townhouse residential dwelling Unit and the townhouse Owner shall be obliged to maintain and repair, if necessary, the check or consumption meter(s) appurtenant to its property, at its sole cost and expense. Forthwith following the Corporation's receipt of the Water Consumption Charge, the Corporation shall issue and submit its own separate invoice(s) to each townhouse residential dwelling Unit Owner, reflecting the townhouse residential dwelling Unit Owner's respective share of the water consumption charge for the water service consumed by the respective townhouse residential dwelling unit, determined or established pursuant to the reading taken by or on behalf of the Corporation of the check or consumption meter(s) appurtenant to such townhouse residential dwelling Unit…… Each townhouse residential dwelling Unit Owner shall be obliged to pay to the Corporation his respective share of the Water Consumption Charge…… At the end of the one year period, the Corporation (or the Declarant if it is before the Corporation is created) shall determine the actual respective share of the Water Consumption Charge incurred by each townhouse residential dwelling unit over such one year period, and shall make an adjustment for the difference between the estimated respective share of the Water Consumption Charge paid by such townhouse residential dwelling Unit Owner and the actual respective consumption charge paid by such townhouse residential dwelling unit Owner and the actual respective share of the Water

Consumption Charge payable by such townhouse residential dwelling Unit Owner over the one-year period, and shall charge or credit the Owner of the townhouse residential dwelling Unit accordingly for the difference.

Section 12(e) Amenities No Owner, occupant, guest, tenant or invitee of a townhouse residential dwelling Unit in the Corporation shall be permitted to use or access the common element areas in the high-rise buildings forming a part of the Corporation without the prior consent of the Corporation's board or unless permitted by a bylaw of the Corporation.

Section 24(b) Snow Removal The Corporation shall arrange and pay for the snow and ice removal from the internal roadways, driveways and walkways within the common elements, as well as from the driveways and/or parking areas located within the exclusive use front and/or rear yard areas attributable to any of the townhouse residential dwelling Units and all expenses incurred therefrom shall form part of the common expenses. The Corporation shall also arrange and pay for landscaping, watering, cutting, fertilization and seeding from time to time of all landscape and/or sodded areas on the Property, including, without limitation, the exclusive use front, side, joint side and rear yard areas attributable to any townhouse residential dwelling Unit and expenses incurred therefrom shall form part of the common expenses. Provided, however, that each Unit Owner shall reimburse the Corporation for any sod and/or landscape replacement required as a result of his negligence or intentional misconduct or that of the residents, tenants, invitees or licensees of his residential dwelling Unit, or members of his family.

(c) Unless otherwise provided herein, each Owner enjoying exclusive use of any common element area shall be solely responsible for maintenance and non-structural repair of such area, subject to the overall direction of the board.

Section 35-Notice

1. Method of giving notice. Any notice, communication or other document, including budgets and notices of assessments required to be given or delivered by the Corporation, shall be sufficiently given if delivered personally to the person to whom it is to be given or if delivered to the address noted in the record, or if mailed by prepaid ordinary mail in a sealed envelope addressed to him at such address or if sent by means of wire or wireless or any other form of transmitted or recorded communication, to such address or, where such notice is required to be given to a Unit Owner, delivered to the Owner's Unit or a's t the mailbox of the Unit unless, the Corporation has received a written request from such Owner that the notice not be given in this manner, or the address for service that appears on the record is not the address of the Unit of the Owner.

[8] Schedule E", referenced above, concerns "common expenses". The relevant sections state as follows:

(c) All sums of money payable for utilities and services serving the Units (if same are not separately metered for such Units) or common elements including, without limiting the generality of the foregoing, monies payable on account of … (iii) water; (vi) off-site snow removal (All purchasers of a Unit(s) are advised that the City of Vaughn may not require off-site snow removal. However, in the case of heavy snowfalls, limited storage space available may make it necessary to truck snow off-site and the cost of same shall be included in the common expenses fee).

(d) All sums of money paid or payable by the Corporation to any and all persons, firms or companies engaged or retained by it, or by its duly authorized agents, servants and employees for the purpose of performing any or all of the duties of the Corporation, including, without limitation, monies payable on account of:

(i) landscaping, watering, cutting, fertilization and seeding from time to time of all landscape and/or sodded areas on the property, including, without limitation, the exclusive use front, side, joint side and rear yard areas attributable to any townhouse residential dwelling Unit and all expenses incurred therefrom shall form part of the common expenses;

(ii) snow and ice removal from the internal roadways, driveways and walkways within the Common Elements, as well as from the driveways and/or parking areas located within the exclusive use front and/or rear yard areas attributable to any of the townhouse residential dwelling Units.

[9] Schedule F, referenced in 6a, above, lists exclusive use of portions of common elements to various units. Those exclusive use portions of common elements include patio, front yard, rear yard, side yard, joint side yard, where applicable.

[10] Section 92 of the *Condominium Act*, provides as follows:

Work done for owner

92 (1) "If the Declaration provides that the owner has an obligation to repair after damage and the owner fails to carry out the obligation within a reasonable time after damage occurs, the Corporation shall do the work necessary to carry out the obligation.

Same, maintenance

(2) If the Declaration provides that the owner has an obligation to maintain the common elements or any part of them and the owner fails to carry out the obligation within a reasonable time, the Corporation may do the work necessary to carry out the obligation.

[11] The condominium package, distributed to all purchasers of condominium units states as follows:

"You own the interior of your unit. Everything else is defined as a common element or common area. This includes foundations, roofs, land, and mechanical equipment to name

> a few. The common elements or common areas are owned by the Condo Corporation of which you and every other owner in the townhouse is a shareholder.
>
> Certain areas of the common elements or common areas are designed for "exclusive use" and are for the personal enjoyment of the owner of the attached unit. This would include areas such as terraces, balconies or patios.
>
> The portion that you own individually (the interior of the unit) is yours to maintain, including certain mechanical systems within the unit as well as any "exclusive use" areas that are attached to your unit. The common elements or areas are maintained by every owner through the condo fees paid to the Corporation.
>
> The condo fees are used to cover expenses such as
>
> > Maintenance of common elements and areas
> >
> > Water and sewage
> >
> > Reserve fund to provide for major repairs and replacement of common elements
> >
> > Snow removal and landscaping
> >
> > …
> >
> > Water
> >
> > All water used by the condo Corporation and by individual homeowners is paid for by the Corporation. Individual owners do not receive a separate water bill from the local utility company.

[12] It is, of course, the Declaration and Act that are the controlling documents. However, I note at the outset, that the discrepancies between the Condo Package and the Declaration, particularly as regards water and snow removal simply cause confusion and may cause expectations which are not met.

[13] Further, as indicated below in my analysis, I note that some of the provisions of the Declaration itself are inexact, unclear or poorly defined and described. For instance, structural and non-structural elements of the units should have been properly described and defined, which was not done.

Interlock Paving/Steps

[14] Beginning in May 2018, certain townhouse units complained about deteriorating steps and interlocking on their front patios or verandas. On or around September 14, 2018, a notice was circulated to the townhouse units regarding the replacement of interlocking and concrete stairs around the buildings and town homes. The notice did not advise the owners of an obligation to repair pursuant to the Declaration or otherwise. If the respondent took the position that the responsibility for repair was that of the owner, as it has in this application, it did not

indicate that the townhouse unit owners would be responsible for the costs of such work, nor did it provide for an opportunity for individual townhouse unit owners to obtain quotes for such work, or to do the work or have it done, as required by s. 92 of the *Act.* As at October 2018, notice was posted on the side of the community mailboxes announcing that work on the patios would commence shortly. By December 2018, the steps and interlocking on 37 townhouses were replaced. The evidence indicated that only a small number of these townhouse owners had complained about the condition of their steps and interlocking. On April 29, 2019, unaddressed notices were affixed to the back doors of each townhouse unit. Townhouse units were notified that they would be charged $5,016.02 each for the repairs to the interlock and steps, to be paid on a monthly basis over one year. Pursuant to the evidence, the Board of Directors had no records of any specific unit owners who had made the request for the steps to be replaced. Based on the evidence, some steps did not need repair or replacement, while others did.

[15] The respondent admits that the payment for the interlocking work came from the Corporation's reserve fund, and that the interlock repairs and replacement were budgeted for prior to the replacements in question, with $231,424 set aside for "pavers-interlock paver restoration". The respondent submits that this did not include townhouse steps and pavers. Prior to the repairs, there was no mention or notice of responsibility being placed on the individual townhouse owners. The respondent took the position that the townhouse owners were responsible for knowing what their responsibilities were pursuant to the Declaration, although I note that from the evidence, the Board members had not previously known themselves, and at the time of the cross-examinations on supporting affidavits in this application, one of the Board members who had been an owner for 6-7 years was unfamiliar with the provisions of the Declaration.

[16] It is the position of the respondent that the veranda and steps are non-structural common elements and, as such, are the responsibility of the individual unit owners. The terms "structural" and "non-structural" are not defined in the Declaration. The "reports" adduced in evidence by the respondent regarding the definition of structural versus non-structural elements include a report from the Condominium Corporation's Engineer, who cannot be considered independent. There was a second report, included in the respondent's application record as an "expert report". It does not appear to have been served in sufficient time for the applicant to respond. The first report simply stated that the engineer considered the steps and veranda to be non-structural, with no explanation or analysis. The second report did not contain the analysis, explanation or rigour expected of an expert report nor the content specified at Rule 53.03(2.1) of the *Rules of Civil Procedure.* I do not place weight on these cursory reports.

[17] I do not and will not decide on whether the structures in question are or are not to be considered structural for purposes of the Declaration going forward, as the respondent had urged me to do, without proper engineering evidence. The parties will have to do that in another forum at another time and with the proper evidence.

[18] In the interim, the following three paragraphs simply contain some observations as regards this issue going forward.

[19] Each veranda serves two townhouses and is thus shared by two unit owners. The verandas are accessed by the shared steps leading up to the verandas.

[20] It appears from the evidence that the interlock paving on the townhouse verandas is the same interlock paving as used on the sidewalks, and has the same decorative inlays. To ensure continuity of appearance of all townhouse units and the interlock, it would be appropriate that the Condominium Corporation be responsible for the costs of the paving for both sidewalks and verandas.

[21] Moreover, because a veranda serves two unit owners, condominium responsibility for maintenance and repairs of the veranda will ensure that both sides of the veranda, as well as repair to the steps, remain consistent. This will benefit the overall appearance and value of the condominium property, as well as the safety of all on the condominium property.

[22] In the circumstances of this case, there has been no evidence adduced to determine whether the steps and veranda interlock are to be considered structural or non-structural. If it is considered structural, the responsibility for these subject expenses is that of the Condominium Corporation. If not, expenses would be the responsibility of the townhouse unit owners. This cannot be determined based on the evidence adduced.

[23] Even were the respondent's position to prevail, based on the evidence, there was no notice given to the townhouse unit holders as regards the repair of the interlock, nor any opportunity given to them to obtain quotes themselves prior to the work being done. Work was done on units where no unit holder had complained of deterioration of the concrete, such as the unit of the affiant, Ms. Tanner, while work was not done on units that were clearly crumbling, such as the unit across the street from her, which was mentioned in her affidavit.

[24] The Board appears not to have taken the position, at the time of the repairs, that the costs of repairs were the responsibility of the unit owners as they did not give prior notice to the unit owners of any responsibility on the unit owners' parts regarding repairs being done, nor an opportunity for the unit owners to complete any repairs first, pursuant to the Act as regards repairs which are the responsibility of the owners.

[25] Without such notice being given, and without the unit owners being given the opportunity to obtain their own quotes and do their own work, the unit owners should not be held responsible retroactively for the costs of the repairs. Moreover, given that the unit owners share a veranda, were they responsible themselves for repair and maintenance charges, there may be disagreements as regards what should be done in terms of maintenance and repair such that consistency of appearance may not result.

[26] In the circumstances, without prior notice and without any record of those who complained of deterioration of steps and those who did not, nor any evidence of inspection of same by the Condominium Corporation, the expenses are to be the responsibility of the Condominium Corporation. Amounts that have been paid to the Corporation by unit owners for these repairs are to be returned in full to the unit owners who paid.

Water Charges

[27] While the Declaration indicates that each townhouse unit owner was to be charged for water use, based on the water consumption of each townhouse unit as calculated by individual metered usage, this was never done. The unit owners received notice that they would be

responsible for the previous year's charges. Each townhouse unit owner was advised that they would be responsible for a portion of the overall water charges for the townhouses, such calculation was contrary to the Declaration which required metering and reading of each individual metre to determine each unit owner's consumption of water. Moreover, this notice was given retroactively.

[28] I note that the Condominium Package and the Declaration are contradictory as regards water charges, as well as snow removal/landscaping. While the condominium package indicates that water charges are to be paid by the Condominium Corporation, the Declaration indicates that each townhouse unit is to be separately metered and the townhouse owner is to be responsible for his or her own unit's water consumption. It is, of course, the Act and Declaration that take precedence, such that the each owner is responsible for his or her unit's actual metered water consumption. Nevertheless, such discrepancies in documentation are simply sloppy and should be corrected.

[29] I am satisfied that going forward, each unit owner should be charged pursuant to the provisions of the Declaration, based on a reading of each unit's water meter, as set forth in the Declaration. However, as regards the retroactive charges, which the Board imposed on the townhouse units pursuant to its correspondence of December 18, 2019, they must be the responsibility of the Condominium Corporation as they are charged retroactively as a block charge and are not consistent with individual metering for each individual unit. Nor were the unit owners given any notice of their responsibility. I am not satisfied that they should have known of the responsibility, as even the Board members were not conversant with the provisions of the Declaration until 2018 and the president of the Board was not conversant with the provisions, and particularly section 24 on which she was questioned, at the time that she was cross-examined on her affidavit in support of this application.

[30] I find that it is not fair or equitable to charge each individual townhouse unit for previous water charges, as was done. The means of doing so was inconsistent with Section 10 of the Declaration, and does not take into account any change of ownership of the townhouse units, which may have occurred during the time that charges were being imposed (February 2018 to December 2018). The charges imposed in the said correspondence of December 18, 2019 are not validly charged to the townhouse unit owners and are to be assumed by the Corporation. Going forward, with proper notice given to each townhouse unit owner regarding metering and charging of water consumption, which I understand was done on December 18, 2019, the charges are to be the responsibility of the individual unit owners as set forth in the Declaration.

Landscaping and Snow Removal

[31] Landscaping as regards the entire condominium property was poorly maintained due to the landscaper first retained. That contract was terminated in 2018, but the landscaping contractor subsequently retained was also unsatisfactory. A third landscaper was retained in 2019. However, as regards the landscaping and flowerbeds around the townhouse units, the landscaping did not improve. Further, the flowerbeds in the townhouse unit patios (one per townhouse unit, and thus one located on each side of the townhouse verandas) remained untended, although they had previously been planted and tended by the Corporation. The Board

of Directors took the position that these patio or veranda flowerbeds were the responsibility of each townhouse owner and refused to do that work.

[32] This was apparently based on their interpretation that the verandas are non-structural and were the responsibilities of the individual townhouse owners. That issue has not been resolved, as there was no proper evidence adduced on which to make such a determination, as above-indicated.

[33] It is clear from the Declaration that all flowerbeds and landscaping around the townhouses (including front, side, joint side and back yards) are the responsibility of the Condominium Corporation. Such landscaping was not properly attended to and must be done by the Condominium Corporation.

[34] For reasons stated above regarding the interlock, namely for reasons of appearance and visible continuity, the veranda beds should continue to be taken care of by the Condominium Corporation as well.

[35] As regards snow removal, the Declaration makes clear that the Corporation is responsible for snow removal. The Board of Directors of the Corporation has now decided that it is not responsible for snow removal on the steps and verandas of the townhouses, although it is responsible for the sidewalks leading up to the steps and patios/verandas. Again, the Board states that these are exclusive use common elements, which are non-structural and, therefore, not the responsibility of the Corporation. As previously indicated, there was no sufficient expert evidence as regards what may, in the circumstances of this condominium property, have been considered structural or non-structural. This Court does not purport to make such a finding without engineering evidence.

[36] The verandas are shared between two townhouse units, as indicated above. There is no evidence of the ages of the townhouse owners or their physical capacities. Nor is there any evidence as to which townhouse owners may leave said townhouses for the winter. These various scenarios are quite likely in a condominium property. Without the Corporation removing snow, this becomes a potential hazard for the Corporation, all residents, and all persons using the condominium property.

[37] The Declaration indicates that the Corporation shall arrange and pay for the snow and ice removal from the internal roadways, the driveways and walkways within the common elements, as well as from the driveways and/or parking areas located within the exclusive use front and/or rear yard areas attributable to any of the townhouse residential dwelling units and all expenses incurred therefrom shall form part of the common expenses. I note further that at Schedule E(c) the cost of off-site snow removal is to be paid from the common expense fees of all unit holders. Such off-site snow removal would include the snow removed from the verandas and steps of each townhouse unit, by whomever, for which each townhouse unit is paying through its condominium fees.

[38] Until such time as the structural versus non-structural issue is determined, I am of the view that the responsibility for snow removal from the verandas and steps of each townhouse unit is to be assumed, as it always has been, by the Condominium Corporation.

Amenities

[39] Pursuant to the Declaration s.12(e), no owner, occupant, guest, tenant or invitee of the townhouse residential dwelling unit shall be permitted to use or access the common element areas in the high-rise building without the prior consent of the Corporation or unless permitted by Bylaw. Until 2011, townhouse unit owners were required, pursuant to Bylaw, to pay $40 per month for use of such amenities. From November 13, 2018, the townhouse unit owners were informed that in order to access said amenities, which include the pool, spa, exercise room, party room and other amenities, a $30 per month charge would be levied.

[40] I am satisfied that the charge for amenities is imposed pursuant to the Declaration. It appears to be imposed pursuant to the consent of the Board of Directors at this point. It would be best to have it regularized by Bylaw.

Notices

[41] The issue of notices to the condominium owners continued to be raised throughout this application. In the issues raised in this application, for the most part, notices were not given in a timely manner. Where charges are proposed, as they were regarding the above issues, notices should be given to the townhouse owners pursuant to the Declaration and *Act.*

[42] There was mention in the evidence that the notices appear to often be given by email. I note that not all residents may have access to email, and there may be those who do not have a computer or laptop. According to the evidence, notices given by email were consented to by a handful of residents only. Notices should be given in the normal course by mail to each individual townhouse owner at the address on record, as well as each individual high-rise owner. This would include all notices such as are discussed in this decision, as well as all notices regarding Board of Directors meetings and all social events.

[43] Having said this, I am cognizant that the Declaration, s.35, regarding notices, indicates that if notice is sent by means of wire or wireless or any other form of transmitted or recorded communication, it may be delivered to such address noted in the record, or where such notice is required to be given to a unit owner, delivered to the unit owners unit or at the mailbox of the unit unless, the Corporation has received a written request from such owner that the notice not be given in this manner. In the event that this provision may include email communication, the owners should be given the opportunity to consent to notice by email or not, given the issues set forth above. The evidence indicated that only a small number of unit owners had consented to receiving notice and communications by email, and record should be kept of such consents.

[44] It is clear that there is significant animosity between the high-rise unit owners and the townhouse unit owners in the condominium. This tension and animosity needs to be improved. Were all owners invited to all events mentioned at paragraph 38 above, and to all such meetings, the atmosphere among condominium owners may hopefully improve. The failure, based on all of the evidence, appears to lie with the leadership of the condominium.

Oppression Remedy

[45] While the respondent submitted that this application was not properly brought, I find the application was properly brought pursuant to section 135 of the *Act.*

[46] While some of the applicants also brought a complaint to the Condominium Management Regulatory Authority of Ontario (the "CMRAO"), that complaint was brought against the Property Management Company and not the Corporation. The CMRAO has different powers and is limited to certain remedies under the *Condominium Management Services Act*, 2015, S.O. 2015.

[47] An oppression remedy is provided for in the *Condominium Act,* s. 135. In order to establish entitlement to a remedy under this provision, the applicants must demonstrate that (i) the Corporation failed to meet their reasonable expectations and (ii) the Corporation's conduct was or threatened to be oppressive or unfairly prejudicial to their interests. Oppression is conduct that is coercive, harsh or an abuse of process. It has also been described as conduct that is burdensome, harsh or wrongful. "Unfair prejudice" is conduct that limits or adversely affects a party's rights and constitutes inequitable treatment relative to others. "Unfair disregard" means to ignore without cause or treatment the legitimate interest of the claimant as being of no importance: *Hakim v Toronto Standard Condominium No 1737*, 2012 ONSC 404, at paras. 33-35.

[48] The two part test for oppression is as follows: (i) the applicant must demonstrate that there has been a breach of its reasonable expectations and (ii) considered in the commercial context, the conduct complained of amounts to "oppression", unfair prejudice or unfair disregard: *Metropolitan Toronto Condominium Corporation No 1272 v Beach Development (Phase II) Corp*. (2011) 2011 ONCA 667 at paras. 5-6.

[49] In determining whether there has been oppression, a non-exhaustive list of factors to be considered is as follows: (i) the history and nature of the Corporation; (ii) the type of interest affected; (iii) general commercial practice; (iv) nature of the relationship between the complainant and the alleged oppressor; (v) the extent to which the impugned acts or conduct was foreseeable; (vi) the expectations of the complainant; (vii) the size, structure and nature of the Corporation; and (viii) the detriment to the interest of the complainant: *1240233 Ontario Inc. v York Region Condominium Corp. No 852 (2009),* 2009 O.J. No. 1 at para. 37.

[50] Taking into account the above factors, the Corporation, created in 2010, had never previously charged the townhouses separately for the services or repairs in issue. The Board of Directors appeared not to have studied the Declaration carefully.

[51] Based on all of the evidence, the actions of the Board of Directors can be seen generally to display poor and unprofessional management, their communication skills with the owners to be deficient, their record keeping to be poor and inadequate, and their adherence to the Declaration, Bylaws and Rules of the Condominium Corporation lacking in rigour. While the actions of the Board may be considered to have come close to oppression, I am, nevertheless, not able to say that said actions are unfairly prejudicial, unfairly in disregard or oppressive: *Metropolitan Toronto Condominium Corp. No 1272.*

[52] Given my finding above, I do not make any order for payment of damages for oppression.

Declarations

[53] I make the following declarations:

1. As regards the repairs to the interlock paving and steps, in the circumstances described above, the Corporation is to assume responsibility for payment;

2. As regards water charges, the charges for 2018 are to be the responsibility of the Corporation. Going forward, individual metre charges are to be charged to each townhouse unit pursuant to the Declaration, s.10;

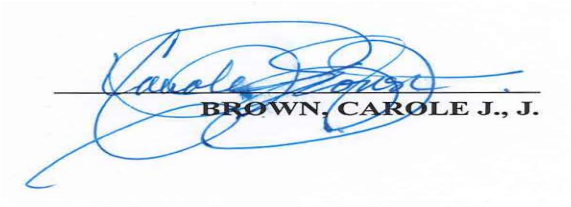
3. The expenses for snow removal and landscaping are to be the responsibility of the Corporation. This will include the steps and verandas of the townhouse units;

4. The cost of use of amenities by townhouse unit owners, going forward, will be in the amount as stipulated by the Board of Directors and as incorporated in Bylaws. At present, that cost is $30 per month;

5. Notices are to be provided by mail sent to the addresses of each high-rise and townhouse unit owner on record. The Board of Directors may request of the owners who would wish to receive notices by email to provide their consent. The Board of Directors must keep a record of the responses of any owners who wish to receive notices by email. Otherwise, notices are to be provided by mail as above indicated.

Costs

[47] I would strongly urge the parties to agree upon their costs of this application and to submit the agreed-upon costs to me. In the event that they are unable to reach an agreement, each is to provide me with submissions and a bill of costs of no more than three pages within 60 days.



Released: 2020-05-04

CITATION: *Beswick et al. v. York Region Standard Condominium Corporation No. 1175,* 2020 ONSC 2785
COURT FILE NO.: CV-19-00625969
DATE: 2020-05-04

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Beswick et al.

Applicants

– and –

York Region Standard Condominium Corporation No. 1175

Respondent

REASONS FOR DECISION

C. J. Brown J.

Released: 2020-05-04