Most Negative Treatment: Distinguished
Most Recent Distinguished: Metropolitan Toronto Condominium Corp. No. 545 v. Stein | 2006 CarswellOnt 3768, 212 O.A.C. 100, 53 C.L.R. (3d) 155, 46 R.P.R. (4th) 186 | (Ont. C.A., Jun 21, 2006)

1997 CarswellOnt 219
Ontario Court of Appeal

York Condominium Corp. No. 382 v. Dvorchik

1997 CarswellOnt 219, [1997] O.J. No. 378, 12 R.P.R. (3d) 148, 69 A.C.W.S. (3d) 195

York Condominium #382, of the City of Toronto, in the Municipality of Metropolitan Toronto (Applicant / Appellant) v. David Dvorchik and Frances Dvorchik (Respondents / Respondents in Appeal)

Mordon A.C.J.O., Finlayson and Abella JJ.A.

Heard: January 17, 1997
Judgment: February 6, 1997
Docket: CA C12466

Proceedings: Reversing (1992), 24 R.P.R. (2d) 19 (Ont. Gen. Div.)

Counsel: *Stephen Schwartz*, for appellant.
Lesli Bisgould, for respondents.

Subject: Contracts; Property
Related Abridgment Classifications
Real property
X Condominiums
X.3 By-laws
X.3.c "No pets" by-laws
Headnote
Sale of land --- Condominiums — By-laws — General
Sale of land — Condominiums — By-laws — Condominium corporation applied to enforce rule prohibiting animals weighing more than 25 pounds — Application dismissed and rule held invalid for lacking evidentiary basis — Corporation's appeal allowed — Rule not unreasonable nor inconsistent with statute — Condominium Act, R.S.O. 1990, c. C.26, ss. 29(1), 29(2), 49(1).
A condominium corporation applied to enforce a rule passed by its directors that prohibited animals weighing more than 25 pounds. The two respondent owners had dogs weighing more than 25 pounds, and both knew of the rule when they brought the dogs into the building. The trial judge dismissed the applications holding that the rule was unreasonable and inconsistent with the *Condominium Act* (Ont.). There being no evidence that large dogs are more of a threat to the safety, security, or welfare of the owners than are smaller dogs, or that large dogs unreasonably interfere with the use and enjoyment of the common elements and of other units any more so than smaller dogs, the rule was held invalid and unenforceable. The corporation appealed.
Held:
The appeal was allowed.
The only limitation on the board's authority to make rules was that the rules be reasonable and consistent with the Act. In making its rules, the board was not performing a judicial role, and no judicialization should be attributed to its function or process. The board was not obliged to hear evidence in reaching its conclusion and setting down its rule. A court cannot substitute its own opinion about the propriety of rules enacted by a condominium board unless the rule is clearly unreasonable or contrary

to the legislative scheme. In the absence of such unreasonableness, deference should be paid to rules deemed appropriate by a board. The rule was neither unreasonable nor inconsistent with the Act. The order was set aside, and the relief requested in the application was granted.

Table of Authorities

Statutes considered:

Condominium Act, R.S.O. 1990, c. C.26

s. 29(1)*considered*

s. 29(2)*considered*

s. 49(1)*pursuant to*

APPEAL by condominium corporation from judgment reported at (1992), 24 R.P.R. (2d) 19 (Ont. Gen. Div.), dismissing application.

Endorsement. *Per curiam*:

1 The appellant applied under s. 49(1) of the *Condominium Act*, R.S.O. 1990, c. C.26 for an order directing the respondents to comply with, among others, Rule 3(F) of the appellant's rules, which requires that no pet weigh more than 25 pounds. The respondents' dog weighed more than the permitted weight, and compliance with Rule 3(F) would have resulted in the removal of the dog from the condominium.

2 The reasons are reported at [1992] 24 R.P.R. (2d) 19. The facts are set out in those reasons.

3 The issue in this appeal is whether Keenan J. was correct when he concluded that the appellant's "25 pound rule" was invalid and unenforceable in the absence of evidence that: a) "large dogs are any more of a threat to the safety, security or welfare of the owners than are smaller dogs"; or b) "large dogs unreasonably interfere with the use and enjoyment of the common elements and of other units, any more so than smaller dogs."

4 A board of directors of a condominium corporation derives its authority to make rules under s. 29 of the *Condominium Act*. Section 29(1) entitles the board to make rules for "the safety, security or welfare of the owners and of the property" or "for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and of the other units." The only limitation on the nature of these rules, is set out in s. 29(2) which states that the rules be "reasonable" and "consistent" with the *Condominium Act*.

5 The condominium board was not obliged to hear evidence in reaching its conclusion that larger pets be prohibited. In making its rules, the board is not performing a judicial role, and no judicialization should be attributed either to its function or its process. In an application brought under s. 49(1), a court should not substitute its own opinion about the propriety of a rule enacted by a condominium board unless the rule is clearly unreasonable or contrary to the legislative scheme. In the absence of such unreasonableness, deference should be paid to rules deemed appropriate by a board charged with responsibility for balancing the private and communal interests of the unit owners.

6 With respect, we do not agree that the rule restricting the size of pets is either unreasonable or inconsistent with the *Condominium Act*. This is a condominium with several hundred units and over a thousand residents. On its face, it is both reasonable and consistent with the legislation that there be a limit on the size — or for that matter the number — of pets to prevent the possibility of "unreasonable interference with the use and enjoyment of the common elements and of the other units." There are, undoubtedly, different approaches the board could have taken to regulate the keeping of pets owned by residents, and it may be that the "25 pound rule" is not the best rule or the least arbitrary. But this does not make it an unreasonable one. The threshold for overturning a board's rules reasonably made in the interests of unit owners is a high one, and it has not been met in this case.

7 Accordingly, we allow the appeal, with costs at both levels, set aside the order of Keenan J., and grant the relief requested in the application.

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Appeal allowed.

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