CITATION: Bruce v. Waterloo North Condominium Corporation No. 26, 2023 ONSC 2995
COURT FILE NO.: CV-22-0899
DATE: 2023/05/18

SUPERIOR COURT OF JUSTICE-ONTARIO

RE: ADAM BRUCE, Applicant

-and-

WATERLOO NORTH CONDOMINIUM CORPORATION NO.26, Respondent

BEFORE: Gibson J.

COUNSEL: David Plotkin, Counsel for the Applicant

Danielle Marks, Counsel for the Respondent

HEARD: January 9, 2023

ENDORSEMENT

Overview

[1] If a condominium corporation does not adequately disclose to a prospective purchaser in a status certificate the existence of a potential project that will likely result in a special assessment, should that condo unit be exempted from any subsequent special assessment or loan for its proportionate share of the cost of the project? In such circumstances, is the condo unit owner entitled to damages for oppression if the condominium corporation threatens to enforce the special assessment order and/or loan contribution requirements through its statutory enforcement mechanisms? These are the questions that arise in this case.

Summary of Facts

[2] The Applicant, Adam Bruce ("Bruce"), is the owner of a residential condominium unit located at Unit 310A, 294-312 Bluevale Street, Waterloo, Ontario ("the Unit"). He resides in the Unit with his spouse and child.

[3] The Respondent, Waterloo North Condominium Corporation No. 26 ("WNCC 26") is a

residential condominium corporation located in Waterloo, Ontario. It was created by registration of its Declaration and Description and is governed by the *Condominium Act.* WNCC 26 is and was at all relevant times professionally managed by a licenced condominium management service provider as agent for the Corporation. At the relevant time this was Sanderson Management Inc., by its licenced manager, Christina Brown ("Brown").

[4] In June 2021, Bruce sought to purchase a home for his family. At that time, the real estate market in Waterloo Region was very heated, with most properties selling within days of being listed on the market, frequently in bidding wars for over asking price and without conditions.

[5] Bruce and his real estate agent, Simonne Marchesseau ("Marchesseau"), visited the Unit on June 22, 2021. This was the same day set for offers.

[6] Bruce instructed his realtor to obtain a status certificate. A status certificate is a disclosure document that the condominium corporations must provide to prospective purchasers of units upon request. On that same day, Marchesseau received a status certificate from the seller's agent dated June 8, 2021.

[7] At paragraph 12, the status certificate stated:

> The Corporation has no knowledge of any circumstance that may result in an increase in the common expenses for the unit. Except: The Corporation's fiscal year end is August 31, 2021. Therefore, monthly common element fees may be increased in accordance with the new budget which has yet to be determined.

[8] Marchesseau reviewed the certificate and summarized its contents to Bruce, concluding that the finances "looked to be in order", that the reserve fund "seemed to be properly funded" and that there was "nothing to suggest there might be any special assessments anytime soon."

[9] Relying on the status certificate, Bruce made an offer of $535,000, which was accepted. On June 22, 2021, Bruce and the seller entered into a binding and irrevocable Agreement of Purchase and Sale without conditions.

[10] Bruce did not retain a lawyer to review the status certificate, and he did not read all the information in the status certificate, relying on the summary provided by Marchesseau before submitting an unconditional offer. Bruce was not advised by Marchesseau of the note in the auditor's report with respect to watermain repairs and the possibility of a special assessment and/or loan application. Marchesseau says that she explained to Bruce the risk of not retaining a lawyer to review the status certificate.

[11] Around May 2022, Bruce learned that WNCC 26 was seeking authorization from the owners to borrow up to $2.5 million to repair or replace its lift station and water main's supply.

[12] Bruce's expected share is expected to be around $34,000, which would be payable either up-front as part of a special assessment or as part of a loan.

[13] Since at least 2017, WNCC 26 had been experiencing serious issues with its water main and lift stations. This had been discussed at several condo board meetings.

[14] In February 2019, WNCC 26 obtained a quote for $415,275 for partial replacement work. In May 2020, it retained MTE Consulting as its consultant for the project. In November 2020, the Corporation's auditor flagged that:

> The Corporation has tendered the water main repairs. It was unknown at the time of the audit the cost of this project, but it is estimated to be significant. The work is expected to commence and be completed in the following fiscal year. To fund this project, there is a possibility of a special assessment to the unit owners and/or an application for a loan.

[15] On January 26, 2021, these audited financial statements were presented to the ownership at the annual general meeting. In March 2021 (three months before the status certificate was issued), the corporation was tendering the project. On June 7, 2021, the day before the status certificate, the corporation's manager (and author of the status certificate) wrote to MTE seeking an update on the tendering. On cross-examination on her affidavit, Brown confirmed that she asked for this update because she knew she had to issue the status certificate the next day.

[16] Around June 2, 2021, Sanderson, the property management company, had received a status certificate request from the seller of the Unit. Brown prepared the status certificate dated June 8,

2021 and provided it to the requester. It was subsequently provided to Bruce through the seller and purchaser's real estate agents.

[17] On June 8, 2021, MTE replied that the tender was closing that week and they would shortly have results. Possessed of this information, Brown prepared the status certificate on behalf of the corporation indicating that the corporation had no knowledge of any circumstances which may result in an increase in common expenses.

[18] Attached to the status certificate was a copy of the auditor's report, which stated at its paragraph 7:

> 7. Commitments
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> …The Corporation has tendered the water main repairs. It was unknown at the time of the audit the cost of this project, but it is estimated to be significant. The work is expected to commence and be completed in the following fiscal year. To fund this project, there is a possibility of a special assessment to the unit owners and/or an application for a loan.

[19] The condo corporation struggled to obtain bids. On June 24, 2021, WNCC 26 received a formal bid from a contractor, G. Melo Excavating Ltd., for $2,013,095. At no time thereafter did the corporation issue a new status certificate to Bruce.

[20] Bruce says that he is unsure how long he will live in the Unit, and states that he would need to opt into the loan, as he could not afford the special assessment. He has not yet been required to opt into the loan. No lien has yet been issued against the Unit. His total cost will be the amortized amount for the time he owns the Unit.

Positions of the Parties

Applicant

[21] The position of the Applicant is that the status certificate of June 8, 2021, did not adequately disclose the existence of the project nor the likelihood of a special assessment or loan, and that the Unit must be exempted. Bruce submits that WNCC 26 withheld material facts from him, that the obligation was to disclose knowledge which may result in increased expenses, that the status certificate must capture future increases, that the Corporation cannot rely on the contrary earlier

statement of the auditor, and that it cannot hide behind its stale reserve fund study.

[22] The Applicant further submits that he was treated in an oppressive manner, as there has been a breach of his reasonable expectations, and that it would be oppressive and unfairly prejudicial to impose upon him the significant cost of a project that the Corporation had known about for more than four years and which it knew could result in a special assessment or a loan. While a lien has not yet been registered, he says, he is subject to the risk that under the *Condominium Act* that non-payment of common expenses (including special assessments) are collectible in the same manner as a mortgage by way of lien and forced sale. He suggests that a declaration of oppression would permit general damages of his out-of-pocket legal expenses.

[23] Simply put, Bruce contends, WNCC 26 failed to disclose material facts about an extremely expensive project that it knew about for years and was in the process of tendering for, and that he relied on the clear and plain language of the status certificate that there was "no circumstance" which "may" lead to a special assessment or a loan.

[24] The Applicant seeks a declaration pursuant to s.76(6) of the *Condominium Act* that the status certificate issued to the Applicant on June 8, 2021 binds the corporation, as of that date against the Applicant who relied upon it; a declaration pursuant to s.76(6) of the *Condominium Act* that the Applicant's unit is exempt from any special assessment, levy, loan or obligation to contribute towards the Corporation's cost to maintain, repair or replace any asset or property not disclosed in the status certificate, including the water main and the lift station, or any related part thereof; and a declaration pursuant to s.135 of the *Condominium Act* that the conduct of the Respondent is oppressive and unfairly prejudicial to the Applicant, and that it unfairly disregards his interests.

Respondent

[25] The position of the Respondent WNCC 26 is that the status certificate contained all material information. General disclosure in status certificates can constitute sufficient disclosure, it submits, and the status certificate in this case provided Bruce with sufficient material disclosure through incorporation by reference of the following information: the Corporation's fiscal year end was August 31, 2021, therefore monthly common element fees might be increased in accordance with the new budget yet to be determined; the amount of the reserve fund; the age of the existing reserve fund

study; and the auditor's report remarking that the Corporation had tendered the water main repairs, and that there was a possibility of significant costs whose funding might require a special assessment to the unit owners and/or an application for a loan.

[26] Further, the Respondent submits, status certificates cannot override special assessment and/or borrowing by-law payment requirements due to the provisions of ss. 76(6) and 84 of the *Condominium Act*, notwithstanding caselaw to the contrary (*Keele Medical Properties Ltd. v. TSCC No. 1786*, 2017 ONSC 1813). Moreover, it contends, even if an exemption can technically be provided from both the special assessment and/or loan, Bruce is not entitled to this because there is no liability on the part of WNCC 26, and Bruce's alleged injuries result from his own conduct. The intervening acts constituting a clear break in the chain of causation which were the proximate cause of Bruce's injuries included, it contends, failing to properly review the entire status certificate and ignoring documents which formed part of it, and failing to retain a lawyer to review and advise upon the status certificate. Further, it submits, Bruce cannot quantify the remedy sought. Even if Bruce is found to be entitled to an exemption, Bruce's Unit should not obtain an exemption for all 25 years of the loan simply due to Bruce's reliance on the status certificate. Providing an exemption at this juncture could conceivably provide an unwarranted benefit to subsequent owners who would not have relied on the deficient status certificate.

[27] Lastly, it submits that even if WNCC 26 threatens to enforce payment, this is not oppression, as it is not unfairly prejudicial, because the Corporation has a statutory obligation to collect common expenses, and equity follows the law and cannot oust or override plain statutory regimes.

[28] The Respondent requests that the application be dismissed in its entirety.

Issues

[29] The issues in this matter are:

1. Did WNCC 26 adequately disclose the existence of the project and likelihood of a special assessment in the June 8, 2021, status certificate?

2. Is Bruce's Unit entitled to an exemption from the special assessment or loan?

3. Is Bruce entitled to damages for oppression?

Law and Analysis

Issue 1

[30] As confirmed by the Court of Appeal for Ontario in *Metropolitan Toronto Condominium Corporation No. 723 v. Reino*, 2018 ONCA 223, the *Condominium Act* is a consumer protection legislation that contains various features designed to safeguard the interests of both existing and future condo unit owners. One of these protective features is contained in s.76 of the *Act* which requires the condo corporation to issue a status certificate, upon request, to "bring to the attention of a prospective purchaser or mortgagee matters which may be of concern to them when contemplating the purchase of a unit": *Reino*, at para. 9.

[31] Section 76 requires a condominium corporation to provide anyone who requests it a status certificate with respect to a unit in the corporation. The purpose of a status certificate is to "ensure prospective buyers have enough information to assist them in making an informed purchase" (*Vasilescu Tarko v. Metropolitan Toronto Condominium Corporation 626*, 2015 ONSC 982 at para. 28, citing *Orr v. Metropolitan Toronto Condominium Corporation No. 1056*, 2014 ONCA 855, at paras. 48,69.)

[32] The status certificate provides essential information about the physical and financial situation of the corporation, including any outstanding or expected claims or liabilities, major projects, or costs, in a transparent manner.

[33] As Chiappetta J. stated at paras. 27-29 in *Keele Medical Properties Ltd. v. TSCC 1786*, 2017 ONSC 1813:

> [27] The status certificate must be in a prescribed form and "must contain a variety of organizational and financial information about both the unit and the corporation as a whole" (*Trez v. Wynford*, 2015 ONSC 2794, 63 R.P.R. (5th) 138, at para. 42). For example, a certificate must contain, pursuant s. 76(1)(a), "a statement of the common expenses for the unit and the default, if any, in payment of the common expenses," and, pursuant to s. 76(1)(b), "a statement of the increase, if any, in the common expenses for the unit that the board has declared since the date of the budget of the corporation for the

current fiscal year and the reason for the increase."

> [28] Paragraph 12 of the status certificate requires a corporation to disclose whether it has "knowledge of a circumstance that may result in an increase in the common expenses" for a unit. Courts have cited with approval Audrey Loeb's statement of what is required by para. 12 (*Condominium Law and Administration*, loose-leaf (2012—Rel. 3) (Toronto: Thomson Reuters Canada Limited, 1998, 2016) now at p. 9-12, cited with approval in *Durham Condominium Corporation No. 63 v. On-Cite Solutions Ltd.*, 2010 ONSC 6342, 99 R.P.R. (4th) 68, at para. 24; *673830 Ontario Limited v. MTCC 673*, 2014 ONSC 1720 (Div. Ct.) (unreported), at para. 17):
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> > This statement requires the corporation to give particulars of any potential increase that it knows or, in the author's view, ought to know about, including the potential for expenses that are forthcoming, for example, as a result of engineering studies currently being conducted, even if no increase in common expenses or a special assessment has been approved by the board.
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> [29] Pursuant to s. 76(6), the status certificate binds the corporation, as of the date it is given and with respect to the information it contains, as against a purchaser or mortgagee of a unit who relies on the certificate. Therefore, a corporation is prohibited from claiming as against a unit owner payment for an expenditure that the corporation was negligent in failing to disclose in the status certificate (*Fisher v. Metropolitan Toronto Condominium Corp. No. 596*, 31 R.P.R. (4th) 273, [2004] O.J. No. 5758 (Div. Ct.), at paras. 8, 10; see also *673830 Ontario Limited v. MTCC 673*, at paras. 20-22).

[34] It makes no difference who requested the status certificate, the vendor or the purchaser. A status certificate binds as against those who rely on it.

[35] A condominium corporation has an obligation at Common Law to take reasonable steps to ensure that the content of the status certificate is accurate: *Orr*, at para. 55.

[36] On the facts in this case, WNCC 26 knew since at least 2017 that its water main and lift station would require costly replacement. Yet, on June 8, 2021, its agent Brown issued a status certificate that asserted that it had "no knowledge of any circumstance that may result in an increase in the common expenses." As the Applicant submits, this statement was clearly inaccurate. If disclosed in the status certificate, this fact would have flagged the potential likelihood of a special assessment or a substantial loan. The water main project was clearly in prospect on June 8, 2021, and it was obvious to any objective observer that the cost would be more than the reserve fund

contained and would require a special assessment or a loan.

[37] As the Applicant submits, and I agree, this does not accord with the purpose of the *Condominium Act* as consumer protection legislation. This purpose requires fulsome disclosure, not minimalist. Only with full disclosure can the prospective purchaser assess their own risk and make informed decisions about the purchase.

[38] Brown as the author of the status certificate on behalf of the Corporation misunderstood the relevant standard. She seems to have believed that disclosure was required only if the potential cost was a certainty, not a possibility. This was not correct. Bruce was entitled to rely on the clear and unequivocal statement that the Corporation "has no knowledge of any circumstance that may result in an increase in the common expenses for the unit."

[39] I do not agree with the view that the Corporation only had to disclose material facts that might affect the common expenses in the current fiscal year of the status certificate. As noted by Marrocco A.C.J. in *Vasilescu Tarko v. MTCC 626*, 2015 ONSC 982 at para. 28,

> [28] Section 76(6) of the *Condominium Act* states that a status certificate binds the corporation "as of the date it is given" with respect to the information that it contains, as against a purchaser. That is, even if the payment required by the special assessment is not due until a date in the future, by virtue of being contained in the status certificate, the special assessment has a legal effect immediately. The purpose of a status certificate is to ensure prospective buyers have enough information to assist them in making an informed purchase (see *1716243 Ontario Inc. v. Muskoka Standard Condominium Corp. No. 54*, [2014] O.J. No. 1359, 2014 ONSC 1848 (S.C.J.), at para. 35; *Orr v. Metropolitan Toronto Condominium Corp. No. 1056*, [2014] O.J. No. 5752, 2014 ONCA 855, at paras. 48, 69). Insofar as the contents of a status certificate bear on the ultimate value of a condominium unit and may influence potential buyers, a unit seller immediately feels the consequences of the special assessment contained within the status certificate.

[40] I also do not agree that the Corporation can rely upon the auditor's statement to offset the clear language in paragraph 12 of the status certificate. The status certificate is an overview for a prospective purchaser. It should flag in clear language any financial concerns that should prompt a prospective purchaser to dig deeper into the "fine print" of all of the attachments included pursuant

to paragraph 34, including the auditor's report. It is unrealistic to assert that notwithstanding the summary "all clear" statement in paragraph 12 that the Corporation had no knowledge of any circumstance that may result in an increase, Bruce should have been expected to dig deeper. Ought he have retained a lawyer to review the status certificate and advise him? Patently, yes. It is always prudent for a prospective purchaser to do so, and choosing not to do so potentially exposes them to risk. But I do not accept the Respondent's submission that his failure to do so in this case made Bruce the author of his own misfortune, given the clear summary statement provided on behalf of the Corporation at paragraph 12.

[41] I find that WNCC 26 did not adequately disclose the existence of the project and likelihood of a special assessment in the June 8, 2021 status certificate.

Issue 2

[42] Pursuant to s. 76(6), the status certificate binds the corporation as of the date it is given, and with respect to the information it contains, as against a purchaser or mortgagee of a unit who relies on the certificate. Therefore, a corporation is prohibited from claiming as against a unit owner payment for an expenditure that the corporation was negligent in failing to disclose in the status certificate.

[43] Given my finding with respect to Issue 1, Bruce should be entitled to an exemption from the special assessment or loan, for the period he owns the Unit. However, there is some merit to the Respondent's submission that to extend such an exemption to the Unit indefinitely, regardless of whomever owns it at a given time, could provide an unwarranted windfall to a subsequent purchaser, the cost of which would ultimately have to be shared amongst all the other owners. Bruce relied on the deficient status certificate. That is why it would not be fair to require him to pay the special assessment or loan. But presumably any potential future purchaser of the Unit could and would be advised through a status certificate that a pro-rated share of the common expenses associated with the project (that is, the remaining number of years out of the 25-year amortization period of the loan) would attach to the Unit.

[44] I therefore find that Bruce's Unit is entitled to an exemption from the special assessment or loan, for the period of time that he continues to own the Unit. However, this exemption should cease

if and when he sells the Unit to someone else. That purchaser should be subject to a pro-rated portion of the special assessment, or the remaining portion of the 25-year loan period, at their choice. Any such prospective purchaser must be advised by Bruce, and by the Corporation through a status certificate, of this amount.

Issue 3

[45] Section 135 of the *Condominium Act* provides a broad remedial jurisdiction to the Court, to rectify any oppressive or unfairly prejudicial conduct of a condo corporation towards a unit owner.

[46] The test for oppression has two parts. The first part requires the claimant to demonstrate that there has been a breach of their reasonable expectations. The second part considers whether the conduct complained of amounts to "oppression," "unfair prejudice" or "unfair disregard" of their interests: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69; also applies for applications regarding oppression under the *Condominium Act: Metropolitan Toronto Condominium Corporation No. 1272 v. Beach Development (Phase II) Corp.*, 2011 ONCA 667, at para. 6.

[47] Oppressive conduct is conduct that is coercive, harsh, harmful or an abuse of power. Unfairly prejudicial conduct is conduct that adversely affects the claimant and treats them unfairly or inequitably from others similarly situated. Unfair disregard means to ignore or treat the interests of the complainant as being of no importance. It is not necessary to find that such conduct was intended before oppression is made out: *Zelinski v. Peel*, 2019 ONSC 6395, at para. 22.

[48] I find that it was Bruce's reasonable expectation that the prescribed status certificate would be completed truthfully, accurately and completely, which it was not.

[49] Inaccurate disclosure to condo purchasers can result in a finding of oppression under the *Act*: *TSCC 2051 v. Georgian Clairlea*, 2019 ONCA 43, at para. 23-29.

[50] It would be oppressive and unfairly prejudicial to impose on Bruce the cost of a project that WNCC 26 had known about for more than four years and which it knew, based on its audited statement, could result in a special assessment or a loan.

[51] I find that the conduct of the Respondent has been oppressive pursuant to s.135 of the

Condominium Act.

[52] However, I agree with the Respondent that the Applicant should not be entitled to legal fee "damages". This would circumvent the unique framework governing legal costs. If the Applicant wishes to pursue a claim for reimbursement for costs on an elevated scale, these may be included in his cost submissions. The declaration itself is the prime remedy in this instance, to address the concerns expressed by the Applicant regarding the Respondent's future course of conduct concerning potential liens or forced sales.

[53] The Application will be granted in part.

Order

[54] The Court Orders and Declares that:

1. Pursuant to s.76(6) of the *Condominium Act*, the status certificate issued on June 8, 2021 was deficient, and binds WNCC 26 as of that date against the Applicant who relied upon it;

2. Pursuant to s. 76(6) of the *Condominium Act*, the Applicant's Unit is exempt from any special assessment, levy, loan or obligation to contribute towards WNCC 26's costs to maintain, repair or replace any asset or property not adequately disclosed in the status certificate, including the water main and lift station, for so long as the Applicant owns the Unit; and,

3. Pursuant to s.135 of the *Condominium Act,* the conduct of the Respondent towards the Applicant has been oppressive and unfairly prejudicial to him, and disregarded his interests.

Costs

[55] The parties are encouraged to agree upon appropriate costs. If the parties are not able to agree on costs, they may make brief written submissions to me (maximum three pages double-spaced, plus a bill of costs) by email to my judicial assistant at mona.goodwin@ontario.ca and to Kitchener.SCJJA@ontario.ca. The Applicant may have 14 days from the release of this decision to

provide his submissions, with a copy to the Respondent; the Respondent a further 14 days to respond; and the Applicant a further 7 days for a reply, if any. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs as between themselves. If I have not received any response or reply submissions within the specified timeframes after the Applicant's initial submissions, I will consider that the parties do not wish to make any further submissions, and will decide on the basis of the material that I have received.

M.R. Gibson J.

Date: May 18, 2023