CITATION: Allegra On Woodstream Inc. v. York Regional Standard Condominium Corporation No. 1284, 2025 ONSC 2777
DIVISIONAL COURT FILE NO.: DC-564/24
DATE: 2025-05-12

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Sachs, R.D. Gordon and Matheson JJ.

BETWEEN:	
Allegra On Woodstream Inc. Appellant	Michael Doyle and Sarah Jamshidimoghadam, for the Appellant
– and –	
York Regional Standard Condominium Corporation No. 1284 Respondent	Eric Savas, for the Respondent
Tarion Warranty Corporation Respondent	Christopher Gallo for the Respondent
	HEARD at Toronto in person: April 15, 2025

DECISION ON APPEAL

R.D. GORDON J.

Overview

[1] The appellant, Allegra on Woodstream Inc. ("Allegra") appeals from the decision of the Licence Appeal Tribunal dated August 9, 2024 (the "Decision"). The Decision requires Tarion Warranty Corporation ("Tarion") to pay the respondent, York Regional Standard Condominium Corporation No. 1284 ("1284") the sum of $1,736,271.23 to remedy major structural defects the Tribunal found to exist in underground garage facilities constructed by Allegra.

Background

[2] Allegra is a developer, builder and vendor of new condominium units and a registrant with Tarion (and its regulatory successor the Home Construction Regulatory Authority) the statutory administrator of the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 (the "*Act*").

It developed, built and sold a condominium complex located at 24 Woodstream Boulevard in Woodbridge, Ontario ("the Property").

[3] The respondent is a condominium corporation. On April 21, 2015 it was deemed the registered owner of the common elements of the Property. With ownership of the common elements came Tarion's statutory warranties to provide coverage for certain defects.

[4] The common elements of the Property include a parking garage. The garage was constructed by Allegra in two phases and is comprised of two underground parking levels. The portion of the garage in phase 1 is under the Property, while phase 2 is under the building of a sister corporation known as York Region Standard Condominium Corporation No. 1307 ("1307"). 1307 was deemed owner of the common elements of its condominium development on February 16, 2016. 1284 and 1307 and a third corporation occupying commercial space in the building, have a cost sharing and easement agreement by which they share in the maintenance and repairs of the garage and its support structures.

[5] As a result of performance audits completed in 2016 and 2018, 1284 and 1307 entered into agreements with Allegra for the repair of several defects in the garage. Those repairs were completed and both the 1284 and 1307 signed documents containing releases.

[6] On October 2, 2020, 1284 submitted a claim to Tarion for further alleged defects in the garage which it claimed were major structural defects. It complained of cracking and water penetration of the suspended concrete slabs, perimeter walls and entrance ramp it says was caused by the installation of a construction joint rather than an expansion joint throughout the garage. 1307 did not submit any similar claim.

[7] After completion of the required inspections and expert reports, Tarion released its warranty assessment report finding there was no major structural defect and on April 11, 2023, issued a decision letter denying 1284's claim. 1284 appealed the decision letter to the Licence Appeal Tribunal. Allegra was added as an interested party.

[8] Following a seven-day hearing and the receipt of written closing submissions, the Tribunal issued a decision in which it found that there were, in fact, major structural defects in the design and construction of the garage and ordered Tarion to pay repair costs totalling $1,736,271.23.

[9] Allegra appeals that decision.

Jurisdiction

[10] This court has jurisdiction pursuant to s. 11(1) of the *Licence Appeal Tribunal Act*, 1999, S.O. 1999, c. 12. The appeal is not restricted to questions of law.

Standard of Review

[11] Appellate standards of review apply with respect to this matter. Accordingly, questions of law are reviewable on the standard of correctness. Questions of fact are reviewable on the standard of palpable and overriding error. The standard of review for questions of mixed law and fact is palpable and overriding error unless the tribunal made some extricable error in principle with

respect to the characterization of the legal standard applied, in which case it is correctness. [*Housen v. Nikolaisen*, 2002 SCC 33].

[12] As set out in *Waxman v. Waxman*, 2004 CanLII 39040 (ONCA) at paras. 296 and 297, a "palpable" error is one that is obvious, plain to see or clear. Examples of palpable factual errors include findings made in the complete absence of evidence, findings made in conflict with accepted evidence, findings based on a misapprehension of evidence and findings of fact drawn from primary facts that are the result of speculation rather than inference. An "overriding" error is one that vitiates the challenged finding.

[13] Allegra concedes that the Tribunal identified and applied the appropriate legal tests. It says the Tribunal made palpable and overriding errors in the application of the tests to the evidence before it.

The Issues

[14] The appellant advances four grounds of appeal:

> 1. The Tribunal made an error of mixed law and fact in determining that Major Structural Defects existed;
>
> 2. The Tribunal erred in law and fact by extending the limited seven-year warranty for major structural defects to a warranty of unlimited duration;
>
> 3. The Tribunal erred in law and fact by determining that the issues raised in the Tribunal Appeal were not previously settled and released; and
>
> 4. The Tribunal erred by awarding damages to 1284 that included the costs of repair to that portion of the garage owned by 1307 and the commercial corporation.

The Major Structural Defect Issue

[15] Section 13(1) of the *Act* provides that every vendor of a new home (including condominiums) warrants to the owner that, among other things, the home is free of major structural defects as defined by the regulations.

[16] For the purposes of this appeal, *Regulation 892* made under the *Act* defines "major structural defect" to include any defect in work or materials in respect of a building, including a crack, distortion or displacement of a load-bearing element of the building, if it materially and adversely affects the ability of a structural load-bearing element of the building to carry, bear and resist applicable structural loads for the usual and ordinary service life of the element. This is known as the major structural repair "function" test.

[17] Allegra submits that the Tribunal erred by:

> (1) Erroneously concluding that there was an identifiable, material and adverse effect on a load-bearing element of the building due to installation of construction joints instead of continuous expansion joints;

(2) Erroneously concluded there was sufficient evidence of potential future failure around the perimeter walls of the garage and suspended slab; and

(3) Improperly dismissed or assigned insufficient weight to the evidence presented by both Allegra's and Tarion's expert witnesses in favour of the 1284's, and failed to appropriately consider or weigh the inferior review and deficient testing carried out by 1284's experts.

[18] In my view, there was no palpable and overriding error made. To the contrary, the Tribunal carefully considered the evidence called by all parties. It carefully analyzed and weighed the expert evidence and the facts upon which those opinions were based. In a well reasoned and compelling decision the Tribunal explained why it preferred the experts of 1284 to the experts of Allegra and Tarion. Although there was limited technical evidence before the Tribunal pertaining to load capacities and the specific impact of the defects on the structural load bearing elements, there was evidence before the Tribunal to support every factual finding that was made. No findings were made in conflict with accepted evidence or based upon misapprehension of evidence. No factual inferences were drawn that were speculative.

[19] Allegra says the Tribunal should have reached a different conclusion based on the evidence - that it did not give appropriate weight to the evidence of its experts and that it failed to adequately scrutinize the evidence of 1284's experts. In essence, it asks that we undertake our own assessment of the evidence and reach a different conclusion. That is not the role of this court.

Improper Extension of 7-year Warranty Issue

[20] Allegra submits that the Tribunal's decision effectively and improperly extends the major structural defect warranty set out in the *Act* from a limited seven-year warranty to an unlimited warranty extending to an undefined time in the future. The specific errors alleged are that the Tribunal: (1) Misinterpreted or failed to acknowledge the legislative intention behind the seven-year warranty; (2) Failed to consider and ignored the deliberately limited timeframe allocated to the warranty by the legislation and improperly reallocated the risk to be borne by the applicable parties; and (3) Incorrectly ignored the evidence of the 1284's failure to carry out maintenance on the garage, and/or how this failure could have lead to the alleged defects that were claimed.

[21] This submission is grounded in the cases of *Wentworth Condominium Corporation No. 336 (Re),* (2007) OLATD No. 158, and *Ban (Re),* [2002] OLATD No. 238, which hold that a major structural defect must manifest within the seven-year period prescribed by the Act to attract warranty protection; and that a structural defect found to exist during the seven-year warranty period that only becomes a major structural defect at some indeterminate future date, does not attract warranty coverage. The maintenance required to keep such defects from progressing after the seven-year warranty period is the responsibility of the owner.

[22] In my view, the Tribunal did not extend the warranty period improperly, or at all.

[23] The Tribunal correctly identified the function test at para. 39 of the decision:

> Tarion's Guideline provides that to meet the function test the defect must materially and adversely affect the load bearing function of a structural load bearing element. Actual or imminent failure of the

> structural load bearing element is not required to satisfy the function test. The test will be met if the element's load bearing function has been materially compromised. The load-bearing function of a building element is the ability of that element to carry, resist, transfer or distribute applicable loads for the usual and ordinary service life of the element. An adverse effect must be material, meaning there is either: (i) a present compromise in load bearing strength; or (ii) a defect that affects the ordinary service life of the structural element.

[24] With respect to the columns, the Tribunal determined that Allegra's failure to install a continuous expansion joint throughout the structure to be a defect in work which had materially and adversely affected the ability of the columns to carry, bear and resist applicable structural loads for their usual and ordinary service life. It made a similar finding with respect to the perimeter walls and with respect to the entrance ramp. With respect to the suspended level slab, the Tribunal found that the extent of concrete delamination determined by 1284's experts supported a conclusion that its ordinary service life had been impacted adversely.

[25] This is not a case, as in *WWC* and *Tan*, where there was no evidence of a major structural defect within the seven-year warranty period. In this case the Tribunal specifically found that defects existed and that those defects were adversely affecting the ordinary service life of the structural elements in question. The Tribunals' findings were based largely on the opinions provided by the parties' structural engineering experts and the evidence upon which those experts relied. Tarion offered two reports completed by structural engineers at LEA Consulting Ltd. Allegra provided reports by Shawky Ibrahim, the structural engineer who designed the condominium, and Alan Tregabov, an architect. 1284 provided reports from Wynspec Engineering and Stephen Blaney, a consultant engineer. The Tribunal undertook a thorough and detailed review of the expert evidence and reasoned that the opinions of Wynspec and Blaney were to be preferred.

[26] There was clearly evidence upon which the Decision was made. The findings were not contrary to other accepted evidence. The Tribunal did not misapprehend the evidence or draw inferences based on speculation. In short, there was no palpable error. The Tribunal found a major structural defect that existed during the seven-year warranty period. It did not improperly extend the warranty period.

[27] Allegra also argued that because the construction joint used in this structure were permitted by the *Ontario Building Code*, it was a palpable and overriding error for the Tribunal to have found that failing to install a continuous expansion joint was a defect. In my view, the Tribunal properly considered and dismissed this argument. The warranty in question requires the structure to be free of major structural defects as defined by the regulation. Although the *Ontario Building Code* may be of assistance in determining whether such a defect exists, it is not determinative. The *Ontario Building Code* sets *minimum* standards for construction. Its standards may, but do not necessarily, equate to industry standards. Four of the five structural engineers gave evidence before the Tribunal that failure to install a continuous expansion joint in a structure this size was very unusual. Indeed, the Tribunal found that a continuous expansion joint had been anticipated in the initial design plan for the structure but was not followed and was revised only after construction was complete as an after-the-fact justification for installation of construction joints. There was evidence upon which the Tribunal made its finding that use of a construction joint rather than a continuous

expansion joint throughout the structure was a departure from industry standards. There was no palpable error in this regard.

[28] Finally, Allegra argues the Tribunal failed to consider and address whether 1284's failure to maintain the garage was the cause of the problems encountered by it. Such a finding, if made, would exclude warranty coverage under s. 13(2)(f) of the *Act* which says that a warranty under subsection (1) does not apply in respect of damage resulting from improper maintenance. However, I note that at paras. 62 and 74 of its decision, the Tribunal specifically considered and rejected the argument that problems with the perimeter walls and suspended slab were the result of a failure to maintain or repair and explained why.

[29] Furthermore, the major structural defects were identified as the failure to install a continuous expansion joint and failure of the concrete. On the facts, it is unclear to me how lack of repair or maintenance could be responsible for these major structural defects.

The Release Issue

[30] 1284 entered into a repair agreement with Allegra on April 27, 2018. The agreement allowed Allegra until December 1, 2018 to complete certain repairs and resolve certain outstanding items. If 1284 remained unsatisfied on December 1, it could file a request for conciliation failing which the warranty claims and outstanding items were deemed to be withdrawn and the warranty would no longer apply to such items. No request for conciliation was made.

[31] Allegra argues that because some of the repair work required in the agreement was also required to address the defects 1284 claimed in this proceeding, the agreement releases Allegra from exposure to the costs of addressing those items.

[32] On January 31, 2019, 1307 signed a "Full and Final Release" to address work done and payments made by Allegra in respect of first- and second-year warranty claims. The release, however, went on to release Allegra from any other matter whatsoever relating to the property.

[33] The Tribunal found that neither the agreement nor the release was a bar to 1284's claim of major structural defect. It found the agreement released only those claims related to the first- and second-year warranty claims, that the illegibility of the schedules to the agreement made it unclear what repairs were to be made to the garage, and that the agreement was not sufficiently specific to result in the abandonment of future warranty claims.

[34] With respect to the release by 1307, the Tribunal determined that it was not signed by 1284 and therefore could not constitute a release on its behalf.

[35] As determined in *Sattva Capital Corp. v. Creston Moly Corp.*, 2104 SCC 53, contractual interpretation involves issues of mixed fact and law, as it is an exercise in which the principles of contractual interpretation are applied to the words of a written contract, considered in light of the factual matrix of the contract. The goal of contractual interpretation is to ascertain the objective intentions of the parties and as such is inherently fact specific absent an error of principle and no such error is shown here.

[36] Allegra has pointed to no palpable and overriding error made by the Tribunal in its interpretation of the agreement and release. That it disagrees with the Tribunal's interpretation is not enough.

The Damage Award

[37] In *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, [2001] 2 S.C.R. 943, the Supreme Court of Canada held that an appellate court should only intervene in an award of damages where "…the trial judge made an error of principle or law, or misapprehended the evidence, or it could be shown there was no evidence on which the trial judge could have reached his or her conclusion, or the trial judge failed to consider relevant facts in the assessment of damages, or considered irrelevant factors, or otherwise, in the result, made "a palpably incorrect" or "wholly erroneous" assessment of the damages."

[38] The garage serves 1284 and 1307 and the corporation occupying the commercial units. Each is the owner of a part of the entire garage, calculated as a percentage of the square feet of the above ground buildings occupied by them. They have an agreement relating to easements and cost-sharing of repairs.

[39] Allegra submits the Tribunal erred by awarding full damages to 1284 when it was not the owner of the entire garage. It submits that the Tribunal's doing so will result in payment to or for the benefit of 1307 and the commercial owner without them having made a warranty claim or, alternatively, a windfall to 1284 if 1307 and the commercial corporation meet their repair obligations as contained in the agreement.

[40] I do not agree. The measure of damages due to 1284 is contained in s. 14(4) of the *Act*. It provides that an owner who suffers damage because of a major structural defect is entitled to receive payment out of the guarantee fund for the cost of the *remedial work required to correct the major structural defect…* (emphasis is mine).

[41] The Tribunal's finding on this issue was as follows:

> [91] I agree with the Appellant that the Act should be broadly and liberally interpreted because it is consumer protection legislation. In my view, since I have determined that there is a MSD, it would create an absurd result if I ordered the respondent to repair the MSD only in the portion of the garage that is owned by the appellant. In effect, this would fail to repair the MSD, because it is an integrated structure, and all the components work together for the stability of the building. In my view, if I ordered the respondent to repair or pay for the cost of repairs to 46% of the building it would endanger the stability of the other half of the structure. I am satisfied that since the garage is a fully integrated structure remedial work is necessary to correct the MSD on the whole structure.

[42] The decision of the Tribunal is not palpably incorrect or wholly erroneous. 1284 has an ownership interest in the common elements that have a major structural defect. It was entitled to the costs of the remedial work to correct it. Awarding it 46% of the cost of the remedial work would not allow it to correct the defect. As noted by the Tribunal, if only that part of the structure occupied by 1284 was repaired, the remainder of the structure would remain unstable and dangerous, and 1284 would have received no remedy at all. In the circumstances of this case, the award was appropriate.

Conclusion

[43] Allegra's appeal is dismissed. In accordance with the agreement on costs reached by the parties, Allegra shall pay costs to 1284 of $28,000.00.

_____
R. D. Gordon J.

I agree _____
Sachs J.

I agree _____
Matheson J.

Released: May 12, 2025

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