



Mediation and Arbitration Under the Condominium Act

By Shawn Pulver February 07, 2012

Section 132 of the Condominium Act sets out the procedure for mediating and arbitrating condominium disputes between an owner and a condominium corporation. Section 132(4) provides, in particular, that every declaration shall be deemed to contain a provision that the corporation and the owners agree to submit a disagreement between the parties with respect to the declaration, by-laws or rules to mediation and arbitration.

There has traditionally been some uncertainty in the law as to when a condominium corporation can proceed directly to court for a compliance order, and by-pass mediation and arbitration.

The recent case of Geeta Channa v. Carleton Condominium Corporation No. 429 has helped clarify this issue.

In this case, the owner, Ms. Channa, made an unauthorized modification and alteration to the common elements of the condominium by making a hole in the roof for the installation of an HVAC system. The condominium corporation incurred costs with respect to the unauthorized alteration, and subsequently commenced a compliance application (a separate application was commenced by the owner with respect to a Notice of Sale that was delivered by the Corporation). The Corporation sought, among other things, the recovery of charges relating to the unauthorized installation, and an Order that the owner enter into a section 98 agreement with the Corporation. Pursuant to Section 98, the agreement was to have been entered into prior to any work being performed on the common elements.

One of the owner's arguments in response to the court application was that mediation and arbitration are a "precondition to the bringing of an application in relation to a disagreement between the two parties."

The court disagreed with the owner's position, and clarified that the mediation and arbitration provisions do not apply when "the dispute herein relates to a direct breach of the Act."

Therefore, based on this case, if a condominium corporation takes the position that there has been a direct breach of the Act, the matter can proceed directly to court, regardless of whether there may be a dispute between the parties as to whether a breach has occurred. This type of "dispute" is not what was intended to be mediated and arbitrated under Section 132 of the Act.



The articles and comments contained in this publication provide general information only. They should not be regarded or relied upon as legal advice or opinions. © Heenan Blaikie LLP.