



## Unsuccessful Oppression Claim by Condo Owner

By Barbara Holmes February 21, 2012

In a recent case, Hakim and Kayyali v. Toronto Standard Condominium Corporation No. 1737, the court considered the unit owner's claim that the condominium corporation's efforts to have the unit owner comply with the declaration was oppressive and unfair.

Since moving into the condominium, the applicant had been parking his van in the underground garage. This was contrary to the provisions in the declaration which prohibited vehicles exceeding a height of 1.9 metres and also prohibited commercial vehicles. Enforcement letters were sent to the owner and seven other residents. There were protracted negotiations between the unit owner and the corporation for several years, but there never was a resolution of the issue.



The unit owner's position was that because of the Board's failure to enforce the declaration for such a long period of time, the unit owner was entitled to have his vehicle grandfathered such that it could be legally parked underground, notwithstanding its violation of the declaration. Not only that, the unit owner also claimed \$150,000 in monetary compensation. The Board was only willing to give the owner a 7-month visitor permit to allow the unit owner time to sell the unit within that time period.

The court reviewed section 135 of the *Condominium Act* and considered whether the corporation's conduct constituted:

1. oppression (conduct that is burdensome, harsh and wrongful or an abuse of power);
2. unfair prejudice (limitation or injury to an owner's rights or interests that is unfair or inequitable); or
3. an unfair disregard for the interests of the unit owner (treating the owner's interests as being of no importance);

and concluded that it did not. The court stated "it must be recognized that the Board is charged with the responsibility of balancing the private communal interests of the unit owners." The court determined that the best interests of the unit owner was not the proper test for assessing the corporation's conduct and intention. The test to be used was an objective test looking at the best interests of the corporation as a whole. With respect to the unit owner's claim that the corporation should be precluded from enforcing the declaration due to the delay in the commencement of the court proceedings, the court disagreed. The corporation's efforts to compromise and accommodate the



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unit owner was an indication of a "reasonable good faith effort on the part of the Board to balance the interests of the applicant with the interests of the other residents" in the condominium community.

Having determined that the corporation's conduct was not oppressive, unfairly prejudicial or an unfair disregard of the unit owner's rights, the court awarded costs to the condominium corporation in the amount of \$45,000 plus disbursements of \$5,979.98. (The unit owner was self-represented in the court proceedings.) This \$50,000 could have been better spent by the unit owner on purchasing a new vehicle rather than engaging in this litigation. Unit owners and condo corporations should be aware that there are never any guarantees with litigation and an unfavourable result can be very costly.

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