CITATION: Zordel v. MTCC No. 949, 2017 ONSC 5544
COURT FILE NO.: CV-16-557826
DATE: 20170919

ONTARIO

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF AN APPLICATION under the *Condominium Act, 1998*

BETWEEN:	)	
HEATHER ZORDEL and JONATHAN MESIANO-CROOKSTON	)	*Jonathan Mesiano-Crookston and Heather Zordel*, In Person
Applicants	)	
– and –	)	*John De Vellis* and *Stefan Rosenbaum*, for the Respondent
METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 949	)	
Respondent	)	
	)	**HEARD:** June 16, 2017

CAVANAGH J.

REASONS FOR JUDGMENT

Introduction

[1] The applicants are owners of units at Metropolitan Condominium Corporation No. 949 ("MTCC 949") which is a two-tower condominium complex in Toronto. They are both lawyers. Since its construction in the 1990s, MTCC 949 has contracted for television services pursuant to a bulk services contract with Rogers, the costs of which were charged to unit owners as a common expense. In June 2016 MTCC entered into a bulk services agreement with a new service provider, Frontline, to provide bundled television and internet services (the "Frontline Agreement").

[2] In their Amended Fresh as Amended Notice of Application ("Notice of Application"), the applicants seek, among other things, a declaration that the Frontline Agreement is null and void as having been made outside of the jurisdiction of MTCC 949. MTCC 949 objected to the applicants' right to seek such declaratory relief in respect of the Frontline Agreement because Frontline, a party to the Frontline Agreement, is not a party to this application and that this court

should not grant a remedy against a non-party. At the hearing of the application, the applicants withdrew their request for a declaration that the Frontline Agreement is null and void.

[3] The applicants challenge the jurisdiction of MTCC 949 to enter into the Frontline Agreement. They also assert that section 97 of the *Condominium Act, 1998* (the "*Act*") required MTCC 949 to provide notice to and/or seek 66.67% approval of unit owners before entering into the Frontline Agreement, and that MTCC 949 failed to do so. The applicants seek an order requiring MTCC 949 to allow them to opt out of receiving and paying for the services provided under the Frontline Agreement.

[4] The applicants also submit that MTCC acted oppressively towards them in the way that it implemented the Frontline Agreement by, in particular, refusing to circulate the applicants' requisition for an owners' meeting and refusing to call such a meeting. The applicants request clarity from the court as to owner expectations when meetings are requested so that "in future 'blocking' of owners' meetings by silence or technical objections does not continue".

[5] For the following reasons, the application is dismissed.

Background Facts

[6] Since MTCC 949 was constructed in the 1990s, it has continuously contracted for television services pursuant to a bulk services agreement entered into with Rogers. The charges for services provided under the Rogers agreement were paid for by MTCC 949 and charged to unit owners as a common expense. Each unit owner paid a proportionate share of the monthly expenses. There was no option to opt-out.

[7] The Rogers agreement was renewed multiple times for five year terms. The most recent bulk services agreement with Rogers was effective from November 2011 through to October 31, 2016.

[8] On June 12, 2016, MTCC 949 entered into the Frontline Agreement that was a bulk services agreement that provides for television services and for internet services.

[9] MTCC 949 entered into an amending agreement on January 4, 2017 whereby the term of the Frontline Agreement was reduced from five years to four years.

[10] MTCC 949 treats the cost of the Frontline Agreement as a common expense that is charged to unit owners. Unit owners are not able to opt out of payment for the provision of such bulk services as a common expense.

Analysis

[11] There are three issues raised on this application:

a. Did MTCC 949 have the jurisdiction to enter into the Frontline Agreement, purchase in-suite television and internet services, and require unit owners to pay for the costs of such services through charges for common expenses without a right to allow the applicants to opt out?

b. Did MTCC 949 need to provide notice to unit owners or obtain prior approval of at least 66 2/3% of the unit owners under s. 97 of the *Act* before entering into the Frontline Agreement?

c. Have the applicants discharged their onus of showing that MTCC 949 engaged in oppressive conduct towards them and, if so, are they entitled to a remedy?

Each will be addressed in turn.

a. Did MTCC 949 have the jurisdiction to enter into the Frontline Agreement, purchase in-suite television and internet services, and require unit owners to pay for the costs of such services through charges for common expenses without a right to allow the applicants to opt out?

[12] Subsections 17(1) and (2) of the *Act* provide that the objects of the condominium corporation are to manage the property and the assets, if any, of the corporation on behalf of the owners, and that the corporation has a duty to control, manage and administer the common elements and the assets of the corporation.

[13] Under s. 2 of the *Act*, "common elements" means all the property except the units and "common expenses" means the expenses related to the performance of the objects and duties of a corporation and all expenses specified as common expenses in the *Act* or in a declaration.

[14] In *Wentworth Condominium Corporation No. 198 v. McMahon*, 2009 ONCA 870 the Court of Appeal described how the *Act* is concerned with the common elements as well as the rights of the owners:

> It is true that the integrity of the common elements of a condominium complex is an important feature of the structure and content of the *Condominium Act*. However, an equally important feature of the *Act* as the rights of the owners. This twin focus of the *Act* was well-described by Finlayson J.A. of this court in *Re Carleton Condominium Corp. No. 279 and Rochon et al.* (1987), 59 O.R. (2d) 545 at 549-50:
>
> > The *Condominium Act* was passed to permit individuals to be owners of the freehold estate in residential units in a building as opposed to tenants in an apartment building. This means that they have disposable real property which is an investment and not simply an expense. Its purchase can be financed by mortgage or lien in the same manner as any piece of real estate. The unit owners are tenants-in-common and have all the rights of any owner of land within the description of their units (s. 1(1)(q) and (z)). By the nature of the building, there are certain "common elements" which are defined by s. 1(1)(g) as "all the property except the units". It is therefore necessary that there be detailed agreements with respect to the maintenance, operation and occupation of these common elements so that the responsibilities and privileges of each unit owner are clearly established.

[15] The declaration of MTCC 949 (the "Declaration") provides in section 5 that "[t]he common expenses shall be expenses of the performance of the objects and duties of the Corporation and such other expenses as listed in Schedule 'E'". Schedule "E" is entitled "Specification of Common Expenses" and reads, in part:

> Common expenses, without limiting the definition ascribed thereto, shall include the following:
>
> ...
>
> (b) all sums of money properly paid by the Corporation on account of any and all public and private suppliers to the Corporation of insurance coverage, utilities and services including, without limiting the generality of the foregoing, levies or charges payable on account of:
>
> - insurance premiums
> - water and sewage
> - waste disposal and garbage collection
> - maintenance materials, tools and supplies
> - snow removal and landscaping
> - fuel, including gas, oil and hydro-electricity unless metered separately for each unit
> - cleaning of parking units
> - cable television;

[16] The applicants submit that the reference to "cable television" in Schedule "E" was to make clear that the corporation could provide cable television in its common areas. They submit that MTCC 949 has purchased television services for itself before, as it contains a restaurant and lounge (which are common elements) which plays cable television for its patrons. They submit that cable television has always been provided in MTCC 949's health club and that MTCC 949 has six to eight guest suites that it rents to unit owners on a short-term basis, each of which has cable television. The applicants acknowledge that MTCC 949 had for many years provided cable television services to its unit owners.

[17] MTCC 949 submits that Schedule "E" clearly lists "cable-television" as a common expense along with many other services - such as water, electricity and garbage disposal - that are provided to the units. It submits that it has always provided, and continues to provide, a number of other services beyond those expressly listed in Schedule "E" which are paid for by unit owners as common expenses. These include, for example, a private bus service.

[18] In my view, the reference to "cable television" in Schedule "E" of the Declaration means that the sums of money paid by MTCC 949 for the provision of cable television services to units are payments on account of "suppliers to the Corporation of ... services" and are properly included as common expenses. I agree with the submission by MTCC 949 that this is the only reasonable interpretation of these words, given that other examples of such charges for in-suite services that are provided to units, as opposed to being provided to common areas such as lounges and the health club for, for example, "water and sewage" and "hydro-electricity", are included in Schedule "E" as common expenses. If the term "cable television" was intended to be

interpreted differently than the terms "water and sewage" and "hydro-electricity" that are used in the same context, and was intended to mean only cable television services provided to common areas and not in-suite services, this would have had to have been expressly stated, and it was not.

[19] The applicants submit that, in any event, the reference in Schedule "E" to "cable television" cannot be interpreted to cover internet services because the plain and ordinary meaning of "cable television" does not include internet and, therefore, MTCC 949 is exceeding its jurisdiction by providing internet services to the units and charging the expenses as common expenses. They submit that to interpret the Declaration to include the cost of internet services provided to unit owners as common expenses would interfere with the property rights of unit owners and their freedom of personal choice as to services to be provided in private suites.

[20] In response, MTCC 949 submits that the addition of internet services to the pre-existing cable television services is an additional service that it pays for and provides to units and that charges for internet services qualify as common expenses under the general language in Schedule "E" of the Declaration. MTCC 949 also points to MTCC 949's General By-Law #5 (the "General By-Law") to support its submission that it has the jurisdiction to enter into a bulk telecommunications agreement.

[21] Section 56 of the *Act* provides that the board of a condominium corporation may make by-laws not contrary to the *Act* or to the declaration including, in s. 56(1)(n), to specify duties of the corporation in addition to the duties set out in the Act and the declaration.

[22] Section 11.02 of the General By-Law provides that "[t]he Corporation shall have all the powers necessary to carry out its duties and obligations. Such powers shall include, but shall not be limited to the following: (a) ... telecommunications ...". Section 23.03 of the General By-Law provides:

> **23.03 Bulk Communications Expenses**
>
> The Corporation shall have the power, but not an obligation to enter into a bulk telecommunications agreement with a telecommunications provider providing telecommunication services to the owners and residents of units for such consideration, during such term and upon such provisions and conditions as the Board may determine to be in the best interests of the owners from time to time, in which event the Corporation shall have a duty to pay the bulk telecommunications fee and any related expense which it contracts to incur, which amounts shall constitute a common expense of the Corporation, provided that individual unit owners and residents shall pay any fees or expenses pertaining to any additional equipment or services.

[23] The applicants do not agree that the General By-Law provides authority to MTCC 949 to charge unit owners for the costs of providing internet services to units. They submit that under s. 56(1) of the *Act*, by-laws cannot contradict the *Act* or the declaration, by-laws must be reasonable and consistent with the *Act* and the declaration, and that MTCC 949's decision to purchase internet services for units and require unit owners to accept and pay for such services is contrary to the *Act* and the Declaration and, therefore, invalid.

[24] A similar argument was made in *Mancuso v. York Condominium Corp. No. 216,* [2008] O.J. No. 1737. In *Mancuso*, Strathy J., as he then was, addressed whether a condominium corporation has the authority to allocate cable television charges under a bulk contract as a common expense to unit owners. In that case, the declaration and by-laws of the condominium corporation did not explicitly authorize the condominium corporation to enter into a bulk television or internet services agreement. The relevant portion of the corporation's by-laws provided that the duties of the corporation included "the arranging for the supply of utilities to the common elements and the units, unless separately metered, except where prevented from carrying out such duty by reason of any event beyond the reasonable control of the Corporation ...".

[25] Strathy J. concluded that cable television or internet services were sufficiently similar to utilities that they reasonably fall within the duties of the corporation under the by-laws. He wrote, at para. 33:

> The by-laws of the Corporation give it the standard corporate authority to enter into contracts and By-law No. 7 provides that its duties are not limited to the operation and maintenance of the common elements and the supply of utilities to the Units. I am satisfied that the duties of the Corporation under By-law No. 7 can reasonably include entering into contracts for the supply of services, such as cable TV or internet, to the unit owners. While these services are not "utilities", they are sufficiently similar to utilities, in this day and age, that in my view they fall reasonably within the duties of the Corporation.

In addition, Strathy J. wrote at para. 34 that it is common for condominium corporations to enter into bulk contracts for the provision of cable television services because the corporation is able to negotiate more favourable terms than an individual owner and are generally beneficial to unit owners, noting that the practice has been implicitly recognized in other cases.

[26] The reasoning of Strathy J. in *Mancuso* is applicable to this case. The General By-Law, in addition to the Declaration, gives MTCC 949 authority to enter into contracts for the supply of services such as internet services to unit owners. In this respect, the General By-Law of MTCC 949 is even more specific than was the by-law in *Mancuso*. I disagree with the applicants' submissions that the reasoning of Strathy J. in *Mancuso* is merely *obiter dicta* and that the decision is out of date because of changes in technology.

[27] The applicants also submit that the major component of the Frontline Agreement is television services, and that it should not be considered to be a telecommunications agreement. I agree with the submission of MTCC 949 that the Frontline Agreement is primarily a television services agreement that is authorized by the Declaration and that the additional internet component is authorized by the General By-Law. The General By-Law does not conflict with the *Act* or the Declaration.

[28] The applicants rely upon the unreported decision of the Supreme Court of British Columbia in *The Owners, Strata Plan LMS 2223 v. Hiromi Tsubota and HSBC Bank Canada*, March 5, 2012, Court File No. S111992. In that case, the court held that the statute upon which the petitioner relied as authority for it to enter into a bulk cable television contract did not

provide the petitioner with the jurisdiction to do so. The court distinguished *Mancuso* on the basis that, unlike in *Mancuso*, there was no by-law that provided jurisdiction for the strata corporation to enter into the contract.

[29] I do not regard the decision in *Tsubota* as authority that supports the applicants' submissions. In *Tsubota*, unlike in the case before me, there was no language in a declaration or in a by-law that provided authority for the strata corporation to enter into a services contract for the provision of cable television services.

[30] I conclude that MTCC 949 did not exceed its jurisdiction by entering into the Frontline Agreement and charging unit owners the cost of the television and internet services provided thereunder as a common expense without a right of opt out.

b. Did MTCC 949 need to provide notice to unit owners or obtain prior approval of at least 66 2/3% of the unit owners under s. 97 of the Act before entering into the Frontline Agreement?

[31] With respect to notice to unit owners, s. 97(2)(c) of the *Act* provides:

> 97. (2) A corporation may, by resolution of the board and without notice to the owners, make an addition, alteration or improvement to the common elements, a change in the assets of the corporation or a change in a service that the corporation provides to the owners if,
> ...
> (c) subject to the regulations made under this Act, the estimated cost, in any given month or other prescribed period, if any, of making the addition, alteration, improvement or change is no more than the greater of $1000 and 1 per cent of the annual budgeted common expenses for the current fiscal year.

[32] With respect to approval by unit owners, ss. 97(4) and (6) of the *Act* provide:

> 97. (4) Despite subsection (3), the corporation shall not make a substantial addition, alteration, improvement to the common elements, a substantial change in the assets of the corporation or a substantial change in a service that the corporation provides to the owners unless the owners who own at least 66 2/3 per cent of the units of the corporation vote in favour of approving it.
>
> 97. (6) For the purposes of subsection (4), an addition, alteration, improvement or change is substantial if,
>
> (a) its estimated cost, based on its total cost, regardless of whether part of the cost is incurred before or after the current fiscal year, exceeds the lesser of,
>
> (i) 10% of the annual budgeted common expenses for the current fiscal year, and
>
> (ii) the prescribed amount, if any; or

(b) the board elects to treat it as substantial.

[33] MTCC 949 submits in order to determine whether the thresholds in s. 97 of the *Act* have been met, one must look at the cost of a change in a service relative to the existing service, and that the only change in a service that is provided to unit owners under the Frontline Agreement is the provision of internet services.

[34] In support of this submission, MTCC 949 cites *Webb v. Metropolitan Toronto Condominium Corporation No. 973*, [2004] O. J. No. 5973 (ONSC). In *Webb*, the unit owner sought a compliance order requiring the condominium corporation to provide notice to unit owners under section 97 of the *Act* of the board's intention to change television service providers from Rogers to Bell. The condominium corporation maintained that no notice was required because the change in service did not involve an additional expense to owners. Himel J. agreed, and concluded that the corporation was entitled to proceed without notice because "the change in service from Rogers to Bell does not involve any additional cost to owners". For similar reasons, Himel J. also concluded that the pre-approval sections of the *Act* did not apply.

[35] The applicants submit that because the technology used for the delivery of television service changed in the Frontline Agreement from the technology used to deliver television service under the previous Rogers agreement, there was an entirely new service, such that the full cost of the bundled services provided under the Frontline Agreement should be used to determine (i) whether the exception under s. 97(2)(c) to the requirement for notice to unit owners applies, and (ii) whether approval of the owners of 66 2/3 per cent of the units was required under s. 97(4) of the *Act*.

[36] The applicants submit that cost of the Frontline Agreement over the original five year term is $3.23 million, including HST, which represents about 40% of MTCC's annual budget for the 2016-17 fiscal year ($7,951,527). They submit that even if the amended four year contract term applies, the cost of the Frontline Agreement would significantly exceed 10% of the annual budgeted common expenses of MTCC 949, and the monthly cost of the Frontline Agreement would exceed 1 per cent of such budgeted expenses.

[37] I disagree with the applicants' submission that the full cost of the Frontline Agreement is the cost of making a change in a service for the purposes of s. 97(2)(c) or s. 97(6) of the *Act*. MTCC 949 has been providing television service to units for many years under a contract with Rogers, and it is continuing to provide television service to units under the Frontline Agreement. The television service provided under the Frontline Agreement through internet protocol television, as opposed to through cable television that had been provided by Rogers, does not represent a change in a service that MTCC 949 provides to unit owners. The service is the same: provision of access to television viewing. The fact that a different technological delivery method is being used does not change the service itself. The only change in a service under the Frontline Agreement that MTCC 949 provides to unit owners is the provision of internet services. The incremental cost under the Frontline Agreement to provide internet services is the cost that must be considered for purposes of ss. 97(2)(c) and 97(6) of the *Act*.

[38] With respect to s. 97(2)(c), the applicants and the respondent agree that there is no "other prescribed period". The applicants submit that if there is no prescribed period, the words "in any given month or other prescribed period" should be read out entirely, leaving the *annual* cost of the change in a service of no more than 1 per cent of the annual budgeted common expenses as the threshold for the exception to apply. They submit that the exception to the default requirement for notice should be read narrowly, and that to use the monthly cost of the change in a service would lead to incongruous results.

[39] I disagree with the applicants' submissions in this respect. If the interpretation advanced by the applicants were correct, there would be no purpose served by inclusion of the words "in any given month" in s. 97(2)(c). These words appear in this statutory provision, and they must be given meaning. In my view, when the words in this provision are read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act* and the intention of Parliament, s. 97(2)(c) of the *Act* means, in this context, that if the estimated cost in any given month of making the change in the service provided to the owners under the Frontline Agreement is no more than the greater of $1,000 and 1 per cent of the annual budgeted common expenses for the current fiscal year of MTCC 949, then MTCC 949 may make the change in the service without notice to the owners.

[40] MTCC's budget for the 2016-2017 fiscal year is $7,951,527. The applicable thresholds under s. 97 are:

a. In order for the notice requirement under s. 97(2)(c) to be triggered, the cost of the change in service, in any given month, would have to be greater than 1% of MTCC 949's annual budget, or $79,515.27.

b. In order for the approval by the owners of 66 2/3 per cent of units to be required under s. 97(4), the total cost of the change in service would have to exceed 10% of MTCC 949's budget, or $795,152.70.

[41] Frontline provided a breakdown of the cost associated with the internet services and the television services provided under the Frontline Agreement. Of the $59 per month charged under the Frontline Agreement, MTCC 949 pays $8 per month per suite for internet services, and $51 per month per suite for television services. There are 812 units.

[42] The monthly cost of the internet portion of the Frontline Agreement is $6,496 ($8 x 812) which, together with HST, is $7,340. This amount is not more than the applicable threshold of $79,515. The exception to the requirement for notice to the owners provided for in s. 97(2)(c) applies.

[43] The applicants submit that MTCC 949 agreed with Frontline to change the term of the Frontline Agreement from five years to four years after this application was commenced in order to improve its position with respect to this litigation. They submit that I should disregard the evidence that the term of the Frontline Agreement changed. I disagree. The cost that must be considered is the estimated cost to MTCC 949 of the change in a service. There is no legal obligation on the part of MTCC to pay for services under the Frontline Agreement beyond the expiry of the four year term. In my view, the estimated cost of the change in a service that must

be considered under s. 97(2)(c) and under s. 97(6) is the cost of the change in a service under the four year term of the Frontline Agreement.

[44] The total cost of the internet portion of the Frontline Agreement over four years (the term of the Frontline Agreement, after the amendment) is $311,808 ($8 x 812 x 48 months) which, together with HST, is $352,343.04. This amount does not exceed the applicable threshold of $795,152. Even if, as the applicants submit, the original five year term of the Frontline Agreement is used, the total cost of the internet portion of the Frontline Agreement would have been $440,428.80 inclusive of HST, which would also not exceed the applicable threshold.

[45] The change in a service that MTCC 949 provides to the owners is not substantial under s. 97(6)(a)(i) of the *Act*. On the record before me, the change in a service is also not substantial under s. 97(6)(a)(ii) or s. 97(6)(b) of the *Act*. Approval of the Frontline Agreement by the owners who own at least 66 2/3 per cent of the units of MTCC 949 was not required.

[46] MTCC 949 submits that even if the total cost of the Frontline Agreement for its four year term is used in comparison with the projected total cost of renewing the Rogers agreement over the same period of time, neither the notice threshold nor the approval threshold are reached. Because of the conclusion I have reached that the incremental cost under the Frontline Agreement to provide internet services is the cost that must be considered for purposes of ss. 97(2)(c) and 97(6) of the *Act*, I do not find it necessary to decide whether the calculations upon which MTCC 949 relies in support of its submission are correct.

c. Have the applicants discharged their onus of showing that MTCC 949 engaged in oppressive conduct towards them and, if so, are they entitled to a remedy?

[47] Section 135 of the *Act* provides:

> 135. (1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Superior Court of Justice for an order under this section.
>
> (2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter.
>
> (3) On an application, the judge may make any order the judge deems proper including,
>
> (a) an order prohibiting the conduct referred to in the application; and
> (b) an order requiring the payment of compensation.

[48] In the Notice of Application, the applicants submit that MTCC 949 acted in a way that is oppressive of certain owners' rights by, *inter alia*:

i. not sending owners notices (for an owners' meeting) as required by law;

ii. destroying notices circulated by the applicants for the purpose of asking owners whether they wanted a meeting;

iii. purporting to go forward with the Frontline Agreement in a way that will add the cost of the services to each owner's common element fees, while admitting its legal basis for entering into the Frontline Agreement, from MTCC 949's By-laws and as interpreted by its own lawyers, was only to charge participating owners; and

iv. entering into the Frontline Agreement insofar as it has a direct monetary impact on unit owners and causes them to buy services they do not want, or causes them to lose the use of personal equipment that they may have purchased and is no longer usable by those unit owners, and an order for compensation of these damages to those directly affected unit owners.

In the Notice of Application, the applicants seek an order that MTCC 949 may only proceed with the Frontline Agreement as an opt-in project on a user by user basis, together with damages in the amount of $50,000 for such oppressive activity, or such other amount as this court deems just.

[49] In response, MTCC 949 submits that notwithstanding that no notice to unit owners was required under s. 97, it attempted to keep the unit owners updated on the actions it was taking in replacing the Rogers agreement. MTCC 949 denies that it acted in ways that disregard the legitimate expectations of unit owners. MTCC 949 submits, citing *McKinstry v. York Condominium Corp. No. 472*, 2003 CanLII 22436 (ONSC) at para. 33 that "the court must balance the objectively reasonable expectations of the owner with the condominium board's ability to exercise judgment and secure the safety, security and welfare of all owners and the condominium's property and assets".

[50] MTCC 949 submits that the Act does not place any obligation on a condominium corporation to circulate a requisition. It provided evidence that it does not, and has never, circulated any surveys, flyers, or notices on behalf of owners. MTCC 949 provided evidence that there was no specific direction given to remove notices circulated by the applicants, and that the security guards routinely remove postings from real estate agents and other solicitations.

[51] MTCC 949 submit that the requisition remitted by the applicants was invalid because it purported to be a notice calling a meeting to vote on whether MTCC 949 should enter into the Frontline Agreement, which is something on which the unit owners are not entitled to vote. MTCC 949 submits that there were other factual errors in the requisition and that there were not enough valid signatures to represent 15% of unit owners which would be necessary to call a meeting.

[52] On the evidence before me, I am not satisfied that the applicants have met their onus of proving that MTCC 949 acted oppressively towards them. There are factual disputes about

accuracy of certain statements made in the applicants' requisition and about the sufficiency of the signatures that accompanied the form of requisition.

[53] In any event, even if I were to have found that MTCC 949 should have called a meeting of unit owners based upon the requisition and signatures tendered by the applicants, in my view, there is no remedy that should follow from a failure to call such a meeting because MTCC 949 acted within its jurisdiction by entering into the Frontline Agreement and it was not required to provide notice to unit owners or to secure the approval of 66 2/3 of unit owners before doing so.

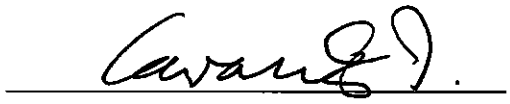
[54] In their factum, the applicants express the issue in respect of the oppression provision in s. 135 of the *Act* as "[w]hen owners request a meeting and *prima facie* provide enough signatures to have that meeting called, what behaviour can the requesting owners expect of management and the board?". In their factum, in relation to their submissions in respect of this section, the applicants "request clarity from the Court as to owner expectations when meetings are requested, so that future 'blocking' of owners' meetings by silence or technical objections does not continue".

[55] The advice that the applicants seek from the court is not tied to particular remedies that they request. In the absence of a requested remedy that is tied to the oppressive conduct that is alleged, I do not consider this case to be a proper one for me to give the clarity and guidance that the applicants seek, and I decline to do so.

Disposition

[56] For the foregoing reasons, I order that the application is dismissed.

[57] If the parties are unable to resolve the costs of this application, MTCC 949 may make brief written submissions within 15 days. The applicants may make brief responding submissions within 10 days of receipt of the submissions from MTCC 949. If so advised, MTCC 949 may make very brief reply submissions within five days of receipt of the applicants' responding submissions.



Cavanagh J.

Released: September 19, 2017

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