

## Legal: Condo Cases

### **Straight From The Source** ***An Interview with Denise Lash***

MTCC 747 v. Korolekh – <http://canlii.ca/t/2c41n>

*Note: Denise Lash was retained by MTCC 747 to deal with Ms. Korolekh and to take steps to have her removed from the unit. An associate at her firm, Ryan Treleavan, argued the case before the courts, but Denise was directly involved in the matter.*

#### **1. What was this case about?**

This case centered on the extreme behavior of a unit owner who significantly and detrimentally impacted her townhome community, resulting in an order for her to sell and vacate her unit.

The unit owner's conduct was appalling. The evidence submitted by our client, Metropolitan Toronto Condominium Corporation No. 747 ("MTCC 747"), by way of nine detailed affidavits, included a number of physical assaults by the unit owner such as allowing her large dog to lunge at neighbours while yelling "get it, get it", grabbing and twisting a neighbour's arm, striking a neighbour in the throat, and repeatedly throwing gravel at a neighbour.

The evidence also included accounts of the unit owner making threats of bodily harm, as well as racist remarks and homophobic slurs. The unit owner also damaged property by "egging" homes, killing plants and interfering with another unit owner's cable television. This extreme behaviour destroyed the small townhome community and rendered the shared single courtyard unusable.

#### **2. What required this case to go to Court?**

The unit owner was, in the words of the Court, "incorrigible or unmanageable". Despite the involvement of the police and repeated written notices by MTCC 747 to cease her misconduct, the unit owner persisted in her behaviour. MTCC 747 also sent notice to the unit owner requiring her to remove her dog from the property which the unit owner ignored and failed to comply with. Even after the notices were sent by MTCC 747, the unit owner assaulted another unit owner and destroyed a neighbour's garden.

It was argued that MTCC 747 had a mandatory duty to mediate prior to bringing the suit, but, given the unit owner's categorical denial of all allegations, the Court agreed mediation would not be productive.

#### **3. What were the main issues before the Court?**

The facts put forward by MTCC 747 were not in dispute. In fact, the unit owner did not challenge MTCC 747's evidence, beyond making "bald conclusory denials". The unit owner did not provide any response to the alleged events put forward by MTCC 747.

Once the undisputed facts were accepted by the Court, it was clear the behaviour of the unit owner amounted to a breach of the unit owner's obligation to refrain from conduct that is "likely to both damage or injure any person or property."

The main issue for the Court to determine was the appropriate remedy pursuant to section 134 of the Condominium Act. MTCC 747 argued an order requiring the unit owner vacate and sell her unit was justified, whereas the unit owner argued a compliance order would suffice.

#### **4. What were the unique challenges of this case?**

The largest difficulty in obtaining the remedy of forced sale was the lack of a legal precedent. Although the remedy had been previously granted, none of those decisions were reported. Further, what little commentary did exist focused on the remedy's rare and extraordinary nature.

To overcome the lack of precedent authority, the facts of this case were compared to a prior case that resulted in a less extreme remedy. Given the current facts were more serious, persistent and objective, the Court established grounds and justification for granting the remedy of forced sale.

#### **5. What can condominiums learn from this case?**

Although the facts and remedy in this case were extreme, condominium boards and unit owners can take comfort in the fact that they will not be compelled to cope with patently unreasonable, destructive and violent neighbours. There is a visible, albeit extreme, threshold beyond which the remedy of an order to vacate and sell is available.

The Court in this case identified three requirements which, if met, would lead to such an order: (1) the misconduct is serious and persistent, (2) the misconduct impacts the community in an exceptional manner, and (3) the unit owner appears incorrigible or unmanageable.

#### **6. What was the outcome of this case?**

The unit owner was ordered to sell her unit within three months and remove her dog within ten days. The Court also issued a compliance order, restraining the unit owner's behavior in the interim leading up to the sale of the unit. MTCC 747 also successfully recovered costs, fixed at \$30,000.

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*Denise Lash is a lawyer, partner and member of Aird & Berlis' Real Estate Group and Chair of her firm's Condominium Corporations Group. She practices in the area of real estate with a strong focus on condominium law.*

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